

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) <span style="float: right;">RATING</span>		OMB Approval 2700-0042		
2. CONTRACT (Proc. Inst. Ident.) NO. <b>DE-AC30-11CC40015</b>		3. EFFECTIVE DATE <b>December 8, 2010</b>		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. <b>CC40015.000</b>		
5. ISSUED BY <b>U.S. Department of Energy- EMCBC EM Consolidated Business Center 250 E. 5<sup>th</sup> Street, Suite 500 Cincinnati, OH 45202</b>		6. ADMINISTERED BY (If other than Item 5) <b>U.S. Department of Energy Portsmouth/Paducah Project Office 1017 Majestic Drive, Suite 200 Lexington, KY 40513</b>		PAGE OF PAGES <b>1 443</b>		
7. NAME AND ADDRESS OF CONTRACTOR (No. street, county, state and ZIP Code) <b>Babcock &amp; Wilcox Conversion Services, LLC 800 Main Street Lynchburg, VA 24504</b>				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)		
9. DISCOUNT FOR PROMPT PAYMENT				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: <b>Section G.2</b>		
11. SHIP TO/MARK FOR <b>To the address shown in: Item 6</b>		12. PAYMENT WILL BE MADE BY <b>See Section G.2</b>		13. AUTHORITY FOR USING OTHER FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)( ) <input type="checkbox"/> 41 U.S.C. 253(c)( )		
14. ACCOUNTING AND APPROPRIATION DATA 01761.2011.33.490811.61000000.25200.1110974.0001504 \$4,599,125.00 01761.2011.33.490810.61000000.25200.1110969.0001495 \$2,342,302.00		15G. TOTAL AMOUNT OF CONTRACT <b>\$427,712,975</b>				
16. TABLE OF CONTENTS						
(*) SEC.	DESCRIPTION		PAGE(S)	(*) SEC.	DESCRIPTION	
PART I - THE SCHEDULE			PART II - CONTRACT CLAUSES			
x	A	SOLICITATION/CONTRACT FORM	A-1	x	I	CONTRACT CLAUSES
x	B	SUPPLIES OR SERVICES AND PRICE/COST	B-1 - B-11	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.		
x	C	DESCRIPTION/SPECS./WORK STATEMENT	C-1 - C-27	x	J	LIST OF ATTACHMENTS
x	D	PACKAGING AND MARKING	D-1 - D-2	PART IV - REPRESENTATIONS AND INSTRUCTIONS		
x	E	INSPECTION AND ACCEPTANCE	E-1 - E-2	K REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS		
x	F	DELIVERIES OR PERFORMANCE	F-1 - F-43	L INSTRS., CONDS., AND NOTICES TO OFFERORS		
x	G	CONTRACT ADMINISTRATION DATA	G-1 - G-5	M EVALUATION FACTORS FOR AWARD		
x	H	SPECIAL CONTRACT REQUIREMENTS	H-1 - H-89			
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE</b>						
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return <u>2</u> copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number <u>  </u> , including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.		
19A. NAME AND TITLE OF SIGNER (Type or print) <b>STANLEY R. COCHRAN Chair, B&amp;W CS, LLC</b>				20A. NAME OF CONTRACTING OFFICER <b>Irma Brown</b>		
19B. NAME OF CONTRACTOR <i>[Signature]</i>		19C. DATE SIGNED <b>12/8/2010</b>		20B. UNITED STATES OF AMERICA <i>[Signature]</i>		
19D. SIGNATURE OF CONTRACTOR AUTHORIZED TO SIGN		20C. DATE SIGNED <b>12/8/2010</b>		BY <i>[Signature]</i> (Signature of Contracting Officer)		

**PART 1 – THE SCHEDULE**

**SECTION B**

**SUPPLIES OR SERVICES AND PRICES/COSTS**

**TABLE OF CONTENTS**

B.1	TYPE OF CONTRACT- ITEMS BEING ACQUIRED.....	B-2
B.2	ESTIMATED COST AND AWARD FEE.....	B-2
B.3	OPTION FOR ADDITIONAL SERVICES .....	B-3
B.4	LIMITATION ON FEE .....	B-4
B.5	FEE DETERMINATION AND PAYMENT .....	B-4
B.6	LIMITATION OF FUNDS.....	B-4
B.7	AUTHORIZATION OF TRANSITION COSTS UNDER THE ..... CONTRACT.....	B-4
B.8	ALLOWABILITY OF SUBCONTRACTOR FEE.....	B-5
B.9	DEAR 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT – SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH (JAN 2004).....	B-5

**SECTION B**

**SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 TYPE OF CONTRACT- ITEMS BEING ACQUIRED**

- (a) This is for one cost-plus-award fee (CPAF) type contract for the Operation of the Depleted Uranium Hexafluoride (DUF6) Conversion Facility located at the Portsmouth Gaseous Diffusion Plant in Piketon, Ohio, and the Paducah Gaseous Diffusion Plant in Paducah, Kentucky with some management functions performed at an office located in Lexington, Kentucky. The contractor shall furnish all personnel, facilities, equipment, material, supplies, services (except as expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of work as described in Section C, Statement of Work (SOW).
- (b) Performance under this contract shall be subject to the availability of funds from which payment for contract purposes can be made. Therefore, funding is subject to change based on actual appropriations and actual award date of the contract(s). Such funds will be provided for all allowable and allocable billings for cost and fee.

**B.2 ESTIMATED COST AND AWARD FEE**

- (a) Three Month Mobilization and Transition Phase\*:

Total Estimated Cost **\$ 6,941,427**

\*No fee shall be paid during the transition period.

- (b) Basic Term of the Contract is 57 Months (excluding options for Hot Functional Testing, WBS 1.0X.01.01.04) :

Total Estimated Cost **\$ 391,990,243**

Total Available Award Fee **\$ 27,047,327**

Total Estimated Cost and  
Total Available Award Fee **\$ 419,037,570**

The Corporate Allocation/G&A costs are capped at 3.2 percent of total contract costs excluding fee. The Corporation Allocation/G&A rate is a composite rate consisting of B&W and URS and includes corporate allocations and excess insurance costs. The Corporate Allocation/G&A cap

does not apply to costs incurred during the transition period.

**B.3 OPTION FOR ADDITIONAL SERVICES**

- (a) The Government may require the delivery of the line items listed below, identified in the Schedule as Option Items, to perform the Hot Functional Testing at the Portsmouth and Paducah Facilities. The Contracting Officer may exercise the option items by written notice to the Contractor at any time during the basic term of the contract in Section F. The Government has the unilateral right to exercise either or both of the following options.
- (b) Option 1 – Hot Functional Testing (Portsmouth Facility) WBS 1.02.01.01.04, including project management. The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this Contract as furnished by the Government) and otherwise do all things necessary for, or incident-to, the performance of Hot Functional Testing at the Portsmouth Conversion Facility (Portsmouth Facility) as described in the Statement of Work in Section C, Paragraph C.3.1.3.5, Subparagraphs a) through r), if the Government elects to exercise this Option. The cost of this Option consists only of the incremental costs associated with Hot Functional Testing.

Total Estimated Cost	<u>\$ 834,510</u>
Total Available Award Fee	<u>\$ 57,581</u>
Total Estimated Cost and Total Available Award Fee	<u>\$ 892,091</u>

- (c) Option 2 – Hot Functional Testing (Paducah Facility) WBS 1.01.01.01.04, including project management. The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this Contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of Hot Functional Testing at the Paducah Conversion Facility (Paducah Facility) as described in the Statement of Work in Section C, Paragraph C.3.1.3.5, Subparagraphs a) through r), if the Government elects to exercise this Option. The cost of this Option consists only of the incremental costs associated with Hot Functional Testing.

Total Estimated Cost	<u>\$ 787,546</u>
Total Available Award Fee	<u>\$ 54,341</u>
Total Estimated Cost and Total Available Award Fee	<u>\$841,887</u>

**B.4 LIMITATION ON FEE**

The Total Maximum Award Fee shall not exceed 10% of the estimated cost (excluding transition costs).

**B.5 FEE DETERMINATION AND PAYMENT**

- (a) For the Basic Term of the contract and Options, there is no base fee amount. The determination of award fee shall be based upon an Award Fee Plan, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. The Award Fee Plan will be unilaterally established by the Government. A copy of the Award Fee Plan shall be provided to the Contractor not later than 30 calendar days prior to the start of the evaluation periods.
- (b) The Award Fee Plan will set forth the evaluation period and the criteria upon which the Contractor will be evaluated for performance relating to any (1) technical requirements if appropriate, (2) management requirements, and (3) cost functions as selected for evaluation. The amount of fee awarded shall be a unilateral determination by the Fee Determination Official (FDO).
- (c) The Award Fee Plan may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.
- (d) Immediately upon the FDO's final determination of the award fee for the evaluation period, the Contractor may invoice any fee amount not previously paid or must repay any excess amount paid. Any unearned award fee from each evaluation period shall not be eligible to be earned in any future period(s). The total available award fee is \$27,047,327, excluding fee for options. Award fee available for each period is as set forth in the Award Fee Plan.

**B.6 LIMITATION OF FUNDS**

Pursuant to the FAR clause 52.232-22, entitled "Limitation of Funds," the total amount of incremental funding allotted is \$6,941,427. It is estimated that this amount is sufficient to cover performance through March 8, 2011.

**B.7 AUTHORIZATION OF TRANSITION COSTS UNDER THE CONTRACT**

Contract transition is up to 90 days of time prior to the date the Contractor assumes full responsibility for operation of the conversion facility. During the transition period, the Contractor shall perform those activities necessary to be prepared to assume full responsibility for the contract requirements. During the transition period, the Contractor shall bring to the site its management team and

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other staff necessary to plan and conduct those activities that provide for an orderly transfer of responsibilities and accountability. The Contractor shall coordinate its activities with DOE and the UDS Incumbent Contractor in order to provide an effective transition of personnel and work activities with minimal cost.

**B.8 ALLOWABILITY OF SUBCONTRACTOR FEE**

- (a) If the Contractor is part of a teaming arrangement as described in FAR Subpart 9.6, Contractor Team Arrangements, the team shall share in the total available fee. Separate additional subcontractor fee is not an allowable cost under this contract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.
- (b) The subcontractor fee restriction in paragraph (a) does not apply to members of the Contractor's team that are: (1) small business(es); (2) protégé firms as part of an approved mentor-protégé relationship under the Section H clause entitled, Mentor-Protégé Program; (3) subcontractors under a competitively awarded firm-fixed-price or firm-fixed-unit-price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, Definitions of Words and Terms.

**B.9 DEAR 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT – SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH (JAN 2004)**

- (a) General.
  - (1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health, including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."
  - (2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

- (3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount.

- (1) If in any period (see 48 CFR 952.223-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c) and 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii), and (viii) apply to WS&H only):
  - (i) Degree of control the contractor had over the event or incident.
  - (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.
  - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
  - (iv) General status (trend and absolute performance) of: safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.
  - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).
  - (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
  - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H

performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).

- (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.
- (2) (i) Except in the case of performance-based, firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.
- (ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.
- (3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.
- (c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:
- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have

resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
  - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other classified information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).
  - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
  - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
  - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.
  - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the

aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

- (3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:
- (i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.
  - (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.
  - (iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.
  - (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

**PART 1 – THE SCHEDULE**

**SECTION C**

**DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**TABLE OF CONTENTS**

C.1	OBJECTIVE .....	C-2
C.2	BACKGROUND .....	C-2
C.3	MOBILIZATION AND TRANSITION, AND OPERATIONS, TESTING, AND START-UP .....	C-4
C.4	CONVERSION OPERATIONS .....	C-9
C.5	PROJECT SUPPORT .....	C-11
C.6	CYLINDER MANAGEMENT .....	C-26
C.7	RELATED SERVICES .....	C-27

## SECTION C

### DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

#### **C.1 OBJECTIVE**

The Contractor shall operate depleted uranium hexafluoride (DUF6) conversion facilities on DOE property at Paducah, Kentucky and Portsmouth, Ohio in accordance with this Statement of Work and contract terms and conditions. These conversion facilities are designed and constructed to convert DOE's inventory of depleted uranium hexafluoride (DUF6), now located at the Paducah Gaseous Diffusion Plant and the Portsmouth Gaseous Diffusion Plant, to a more stable uranium oxide form ( $UO_x$ ), to be characterized as acceptable for transportation and disposal. The Contractor shall also provide continuing cylinder surveillance and maintenance (S&M) services for the DOE inventory of DUF6, low-enrichment uranium (LEU) hexafluoride (UF6), normal UF6, and empty and heel cylinders in a safe and environmentally acceptable manner.

The activities within the scope of this Statement of Work include:

- Provide S&M for the DUF6 conversion facilities and associated equipment.
- Operate the conversion facilities to convert the DUF6 from the inventory at Paducah and Portsmouth to uranium oxide at design throughput of the conversion facilities.
- Reuse and/or transport and dispose of the DUF6 conversion process end-products and wastes.
- Sell the aqueous hydrofluoric acid (AqHF) product.
- Provide S&M services for the cylinder storage yards.

#### **C.2 BACKGROUND**

##### **C.2.1 Storage and Disposition of Depleted Uranium**

C.2.1.1 DOE has the programmatic responsibility for the Government's DUF6 inventory as the successor of the Atomic Energy Commission and the Energy Research and Development Administration. The chemical and physical characteristics of DUF6 pose potential health risks, and the material must be handled accordingly.

C.2.1.2 Since the 1950s, DUF6 has been stored at Oak Ridge TN, Paducah KY, and Portsmouth OH in large steel cylinders. Cylinders formerly at Oak Ridge have been relocated to Portsmouth, where storage continues along with storage at Paducah. Most cylinders have a 14-ton (12-metric-ton) capacity and are 12 ft (3.7 m) long by 48 inches (1.2 m) in diameter, with a steel wall thickness of 5/16 in. (0.79 cm). Similar but smaller cylinders are also in use, and at Paducah there are several 19-ton (CV19) cylinders

made of former UF<sub>6</sub> gaseous diffusion conversion shells. During storage, a cylinder contains predominantly solid DUF<sub>6</sub> in contact with DUF<sub>6</sub> vapor at less than atmospheric pressure. The DUF<sub>6</sub> cylinders managed by DOE at the two sites are typically stacked two cylinders high in the cylinder storage yards.

- C.2.1.3 Since 1990, the Department's cylinder management has focused on the ongoing S&M of the cylinders containing DUF<sub>6</sub>. Public Law (P.L.) 105-204, signed by the President in July 1998, directed the Secretary of Energy to prepare and submit to Congress a plan to ensure that all funds accrued on the books of the United States Enrichment Corporation (USEC) for the disposition of DUF<sub>6</sub> will be used for the construction and operation of plants to treat and recycle DUF<sub>6</sub> consistent with the National Environmental Policy Act (NEPA).

## **C.2.2 Site Information**

- C.2.2.1 The Paducah Gaseous Diffusion Plant is located in western McCracken County, 15 miles west of Paducah, Kentucky, between U.S. Highway 60 and the Ohio River and consists of approximately 115 buildings and structures. A single rail system serves the site with a spur that accesses both the oxide and HF load-out areas.
- C.2.2.2 The Portsmouth Gaseous Diffusion Plant is located 23 miles north of Portsmouth near Piketon, Ohio, on U.S. Highway 23. A single rail system serves the site. Facilities required for the gaseous diffusion operations have been placed in stand-by and are leased to USEC in accordance with the USEC/DOE lease agreement.
- C.2.2.3 The Paducah and Portsmouth DUF<sub>6</sub> conversion facilities were designed and built by the UDS Incumbent Contractor. Construction of both conversion facilities will be complete and Operational Readiness Reviews (ORRs) will have been completed by the UDS Incumbent Contractor and the DOE in accordance with DOE Order 425.1C Startup and Restart of Nuclear Facilities prior to initial operations.
- C.2.2.4 Upon Contracting Officer (CO) issuance of the Notice to Proceed beginning the Mobilization and Transition Phase, all ORR "Pre-start" findings shall be in the process of closure by the UDS Incumbent Contractor. At completion of the Mobilization and Transition Phase, the ORR Pre-start findings will be closed, and the Department will have completed and approved the DOE ORR. During this period the UDS Incumbent Contractor will be executing a DOE approved ORR Post-start findings corrective action plan. Any Post-start findings not completed by the UDS Incumbent Contractor may transition to the Contractor at the conclusion of the Mobilization and Transition Phase.

### C.3 MOBILIZATION AND TRANSITION, AND OPERATIONS, TESTING, AND START-UP

**C.3.1** After receiving a written Notice to Proceed from the CO, the Contractor shall begin mobilization and transition activities in accordance with the terms of the contract. The Mobilization and Transition Phase shall be performed within 90 days of receipt of the Notice, and at its conclusion, the Contractor shall assume full responsibility for the conversion facilities operation and cylinder surveillance and maintenance (S&M). Following completion of the Mobilization and Transition Phase, the Contractor shall begin the Operations, Testing and Start-up Phase. Activities for this phase will be completed within the following 270 days. This phase shall be considered complete when the conversion operations reach steady state operations at full design capacity. During this 270-day period, the Contractor shall complete a Readiness Assessment (RA), complete hot functional testing (if option exercised), initiate partial conversion operations, and increase conversion operations to facility design throughput capacity.

C.3.1.1 The Contractor shall prepare and deliver an **Operations Transition and Start-up Plan (OTSP)**, which shall guide the first two phases of contract activities. The plan shall include two sections:

C.3.1.1.1 The first section of the OTSP shall cover the Mobilization and Transition Phase, to occur within the 90-day period after the CO issues the Notice to Proceed. Completion of the Mobilization and Transition Phase shall result in transition of operational responsibility for the conversion facility and cylinder S&M from the UDS Incumbent Contractor to the Contractor. During transition phase execution of the OTSP, the Contractor shall review the existing approved **Cylinder Surveillance and Maintenance Plan [D-34]** (see Section F, Table F-1) and either accept or revise this plan. The existing plan or any revisions made to the existing plan shall be submitted to the DOE for approval prior to the Contractor's assuming cylinder S&M responsibility.

C.3.1.1.2 The second section of the OTSP shall cover the Operations, Testing and Start-up Phase, to occur within the 270-day period following the completion of the 90-day Mobilization and Transition Phase. This section of the OTSP shall address activities including the readiness assessment (RA), hot functional testing, initiation of partial conversion operations, and ramp-up of the facility to full conversion operations.

C.3.1.1.3 The CO will include in the Notice to Proceed that the OTSP has been approved and designated as revision 0. The Contractor shall manage the first 360 days following the CO's Notice to Proceed according to the approved OTSP and any additional guidance from the CO. Refer to Section F "Deliveries or Performance" for detailed instructions, requirements, and schedule for the submission of reports, plans, and

other required documents, during the Operations, Testing and Startup phase.

C.3.1.2 The Mobilization and Transition Phase, as part of Section one of the OTSP, shall address the following activities. In addition, a schedule of these activities shall be included for this 90-day phase.

C.3.1.2.1 Communication process among DOE, the UDS Incumbent Contractor, UDS Incumbent Contractor subcontractors, Contractor employees, USEC, other contractors or tenants at the Portsmouth or Paducah site;

C.3.1.2.2 Identification of key transition issues and milestones, including transition of the cylinder S&M responsibilities;

C.3.1.2.3 Identification of a contractor transition team (inclusive of consultants and teaming);

C.3.1.2.4 Integration of work packages (direct and indirect) and budgets from UDS Incumbent Contractor subcontractors;

C.3.1.2.5 Human resource management consistent with Workforce Transition and Contractor Human Resources Management requirements as described in Section H;

C.3.1.2.6 Implementation of existing or proposed management and operating systems (e.g., project management, Integrated Safety Management, operating procedures, electronic data processing, budget and planning, purchasing, compensation, labor/payroll, indirect and direct costs, property management, billing and estimating);

C.3.1.2.7 Assumption of all Environmental, Safety and Health (ES&H) responsibilities, functions, and activities;

C.3.1.2.8 Reserved

C.3.1.2.9 Development of all interface control documents;

C.3.1.2.10 Assumption of permits, applications, licenses, and other regulatory documents;

C.3.1.2.11 Performance of a physical walk-down of the facilities and equipment with the UDS Incumbent Contractor;

C.3.1.2.12 Review of as-built drawings and technical specifications with the UDS Incumbent Contractor;

- C.3.1.2.13 Assumption of Authorization Basis documents and Documented Safety Analysis process; and,
  - C.3.1.2.14 Schedule and milestones for finalization of required deliverables as described in Table F-1 Deliverables.
  - C.3.1.2.15 After the Contractor completes the activities contained in the Mobilization and Transition Phase section of the approved OTSP, including any other activities as may be authorized or directed by the CO, the Contractor shall notify the CO in writing that it is ready to assume full responsibility for conversion facility operations and cylinder S&M.
  - C.3.1.2.16 The Contractor shall assume full responsibility for conversion facility operations, cylinder S&M, and proceed to the Operations, Testing and Start-up Phase on the date of approval specified in writing by the CO.
- C.3.1.3 The Operations, Testing and Start-up Phase, as part of section two of the OTSP, shall address, but not be limited to, the following activities. In addition, a schedule of these activities shall be included for this 270-day phase.
- C.3.1.3.1 Develop written programs, policies, procedures, and plans associated with facility operations, including cylinder S&M. Documents developed by the UDS Incumbent Contractor during the Operational Readiness Review (ORR) will be made available to the Contractor, which the Contractor is encouraged to evaluate and revise for its use;
  - C.3.1.3.2 Review the existing **Cylinder Surveillance and Maintenance Plan [D-34]** (see Section F, Table F-1) and revise this plan, if necessary, to effectively integrate cylinder S&M with the Operations, Testing, and Startup phase cylinder yard activities. Any revisions shall be submitted to the DOE for approval, and must be approved by the DOE prior to the Contractor's performing cylinder S&M during the Operations, Startup and Testing phase.
  - C.3.1.3.3 Train the Contractor's (and subcontractor's, if any) staff on the written programs, policies, procedures and plans associated with conversion facility start-up operations;
  - C.3.1.3.4 Advise the CO, in writing, whether any of the adopted programs, policies, procedures, and plans from the UDS Incumbent Contractor will require modification, as a result of the employee training, physical walk-down of facilities, and/or review of the as-built drawings and technical specifications. The Contractor's

written notification shall include a detailed description of any additional costs and a schedule for completion of the modifications (if modifications are required);

- C.3.1.3.5 Prepare/revise, submit for DOE approval, and execute the approved **Conversion Facilities Operations and Maintenance Plan [D-2]** (see Section F, Table F-1). The Contractor shall submit updates to this plan, as needed, for DOE approval, such as after completion of the RA or hot functional testing (if option exercised). This plan shall address activities including start-up and conversion operations, cylinder sequencing, staffing, staff training, shift operations including facility maintenance, development of procedures, policies for equipment inspection and maintenance, and parts replacement and spares. This plan shall describe, as distinct elements, the hot functional testing and partial conversion operations.

The portion of the plan addressing hot functional testing shall, at a minimum, address in detail the following requirements during performance of hot functional testing:

- a) Personnel qualifications.
- b) Hot functional testing controls, including first use controls and access controls.
- c) Management of the startup process.
- d) Single conversion unit testing.
- e) Initial conversion line testing.
- f) Extended conversion line testing.
- g) Identification of Facility functions to be demonstrated.
- h) Method for establishing Facility operating parameters.
- i) Startup sequence for a Facility.
- j) Proposed specific cylinders to be processed during hot functional testing.
- k) Maintenance control during hot functional testing.
- l) Detailed requirements for test completion.
- m) Post-testing review and reporting
- n) Required records.
- o) Applicable lessons learned from comparable facilities.
- p) How the Contractor intends to utilize “lessons learned” from hot functional testing.

- q) Emergency planning, drills and required exercises.
- r) Detailed approach for transition from hot functional testing to partial conversion operations and Conversion Operations (see Section C.4).

The Contractor may elect to review/adopt the UDS Incumbent Contractor's Hot Functional Test Plan, which addresses the above elements, into their Conversion Facilities Operations and Maintenance Plan.

The Government may elect not to exercise the option for the Contractor to perform hot functional testing. The portion of the plan addressing hot functional testing shall also describe management of the work in the event the option to perform hot functional testing is not exercised.

The plan shall also address how the Contractor will manage a curtailment or suspension of plant operations caused by unforeseen events such as budget shortfalls or the inability of the LLW disposal site to receive products. The Contractor shall consider the cost benefit trade-off between continuing operations with onsite storage and safe, temporary shutdown without damage to equipment, without causing health, safety or environmental hazards or risks, and without impact to the operations personnel.

- C.3.1.3.6 Prepare/revise, submit for DOE approval, and execute the approved **Readiness Assessment (RA) Plan [D-3]** (see Section F, Table F-1) to verify that all aspects of the ORRs completed by the UDS Incumbent Contractor and the DOE are adequately transitioned, and to demonstrate the Contractor's personnel, facilities, and procedures are adequate to begin hot functional testing, partial conversion operations and proceed to ramp-up to conversion operations. Although this is not a restart of the nuclear facilities, since the UDS Incumbent Contractor and the DOE will have completed their respective ORRs, DOE Order 425.1C, which addresses startup and restart of nuclear facilities, shall be used as a guide. DOE will provide written approval to the Contractor when the RA and associated pre-start findings are addressed.
- C.3.1.3.7 Upon written approval from the CO for the RA, proceed to hot functional testing (if option exercised), partial conversion operations, and ultimately achieve conversion operations.
- C.3.1.3.8 After the Contractor completes all activities contained in the Operations, Testing and Start-up Phase portion of the approved OTSP, including any other activities as may be authorized or

directed by the CO, the Contractor shall notify the CO in writing that it has achieved conversion operations. The Contractor shall obtain written approval from the CO before proceeding to Conversion Operations.

**C.4 CONVERSION OPERATIONS**

C.4.1 Conversion operations are defined by the conversion of DUF6 cylinders in a routine manner using the full design capability of the conversion facilities. The Contractor shall conduct conversion operations in accordance with the approved plans and conversion facility process design to meet the end point criteria specified. Once the Contractor achieves conversion operations, processing shall be performed at a minimum of annual process design capacity (see Table C-1). The RA, hot functional testing (if option exercised), partial conversion operations, and ramp up to conversion operations will occur during the Operations, Testing and Start-up Phase, consistent with successful execution of the OTSP.

<b>Table C-1 DUF6 Processing Rates</b>		
<b>Site</b>	<b>MT DUF6</b>	<b>Plant Capacity</b>
Portsmouth Gaseous Diffusion Plant	250,000	13,500 MT/yr
Paducah Gaseous Diffusion Plant	441,000	18,000 MT/yr

C.4.2 The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Conversion Facilities Operations and Maintenance Plan [D-2]** (see Section F, Table F-1). The Contractor shall provide updates to this plan, for DOE approval, as needed, and following critical activities such as completion of the RA or hot functional testing (if option exercised) , but no less frequently than annually. This plan shall include startup and conversion operations, cylinder sequencing, staffing, staff training, shift operations including facility maintenance, development of procedures, policies for equipment maintenance, and parts replacement and spares.

C.4.3 The Contractor shall safely process DUF6 cylinders identified in the Cylinder Information Database (CID). Processing shall be with a preference for lower assay cylinders (less than 0.25% <sup>235</sup>U). Cylinders greater than 0.25% <sup>235</sup>U may be processed upon approval of the DOE, based upon the **Conversion Facilities Operations and Maintenance Plan [D-2]** (see Section F, Table F-1). Additional specific details for the operation sequence shall be coordinated with DOE as part of the recurring Award Fee Plan development.

C.4.4 The Contractor shall safely process and disposition DUF6 cylinders according to C.4.3 above, irrespective of size, shape, or condition. Cylinders which are corroded, dented, breached, or otherwise present a greater hazard in storage shall

not be excluded from conversion operations and must be converted according to the approved plans per C.4.3.

- C.4.5 The Contractor shall operate and maintain the conversion facilities in accordance with DOE Order 5480.19, "Conduct of Operations Requirements for DOE Facilities," requirements of the Section I clause entitled "DEAR 970.5204-2 Laws, Regulations, and DOE Directives"; and applicable permits and licenses to convert DUF6 inventory to the chemically stable form.
- C.4.6 The Contractor shall be responsible for any pre-conversion confirmation of cylinder contents and conditions necessary to establish that the DUF6 feed to the conversion facility will meet the design basis criteria for DUF6 feed as defined in the System Requirements Document. The Contractor also shall be responsible for any characterizations necessary to support applications for and approvals of required operating permits; to ensure subsequent compliance with environmental regulations and the requirements of these permits; to verify the technical and economic performance of operations; to demonstrate compliance with occupational health and safety ordinances; and to quantify, classify, and certify co-products, wastes, effluents, and emissions from the conversion facility.
- C.4.7 The Contractor shall be responsible for the safe, compliant storage of the cylinders and products/wastes until these cylinders, co-products, or wastes are transported off-site and dispositioned (either acceptance or disposal by a licensed waste disposal site or transfer of title to another entity for use/reuse). The Contractor shall provide the capability to safely store for six months the empty cylinders and products/wastes generated from conversion, except the aqueous hydrofluoric acid (AqHF). AqHF must be continually dispositioned. The method of storage of each of these materials shall be considered in the NEPA and safety analyses. The Contractor shall store radiological waste materials in accordance with DOE Order 435.1 as required by the Section I clause entitled "DEAR 970.5204-2 Laws, Regulations, and DOE Directives." Storage and packaging of reactive fluorine products must conform, as appropriate, to federal, state, and local regulations for chemical hazards.
- C.4.8 The Contractor shall be responsible for management of cylinder yard operations, including retrieving cylinders from the yards and transporting them to the conversion facility, according to the approved **Conversion Facilities Operations and Maintenance Plan [D-2] (see Section F, Table F-1)**. The Contractor shall process both good and degraded cylinders in a systematic manner and shall not arbitrarily set aside degraded cylinders.
- C.4.9 Any DUF6 conversion products, by-products, or the empty cylinders, which are determined to be waste shall be processed, packaged, and certified to meet the waste acceptance criteria (WAC) at the federal disposal facility or at another licensed low-level waste (LLW) repository. If the federal disposal facility is chosen by the Department for all or a portion of the material, the Contractor shall

transport the material to that site and transfer the material, certified for disposal, to the operating contractor of the federal disposal facility. If another licensed LLW repository is chosen for all or a portion of the material, the Contractor shall be responsible for disposition actions. Disposal of the conversion products and wastes shall be performed in accordance with applicable local, state, and federal regulations. Wastes can include the empty cylinders, neutralization products (e.g., fluorides of calcium, sodium, and potassium [CaF<sub>2</sub>, NaF, KF]), spent absorbents, contaminated personal protective equipment, contaminated operating equipment and tools, mixed waste, and other incidental wastes. The processing of empty DUF6 cylinders shall include neutralization of heels, loading and neutralization of waste (and the empty cylinders, if necessary) into waste containers, and transporting for disposal.

C.4.10 Transuranic (TRU) wastes (as defined in DOE Order 435.1) are not anticipated to be generated from conversion operations; however, TRU wastes may be found in the remaining, non-volatile heels of some emptied cylinders. The existence of residual TRU wastes in empty cylinders does not preclude their refilling with uranium oxide, so long as the filled cylinder meets all requirements for transportation and disposition. Damaged or otherwise unsuitable cylinders cannot be filled with UOx. A nearly empty cylinder with a TRU heel may result in an overall TRU concentration of greater than 100 nCi/g, which may need to be treated as TRU waste as defined by DOE O 435.1. In this case, the Contractor must package, transport, and dispose in a safe and approved manner following applicable regulations.

C.4.11 As-built drawings shall be maintained current throughout the term of this contract, with revisions provided for DOE review no less frequently than annually.

## C.5 PROJECT SUPPORT

The Contractor shall ensure effective performance of activities necessary to safely operate the conversion facilities and carry out the cylinder management activities. The following paragraphs of this Section define the Department's requirements to manage the conversion operations as a DOE project, and in accordance with all applicable DOE programmatic requirements (e.g., safety, regulatory compliance, security, quality assurance, records management). For the interface with other DOE site contractors see Section J, Attachment J-5 "DUF6 Services & Contract Interface Requirements Matrix."

### C.5.1 Project Management

C.5.1.1 The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Project Management Plan [D-4]** (see Section F, Table F-1) that describes a project management system and a comprehensive, resource-loaded, and integrated contractor cost and schedule baseline in accordance with DOE Order 413.3A.

- C.5.1.2 The Contractor shall support the DUF6 Federal Project Director (FPD) in his/her role as chairperson of the Integrated Project Team (IPT) that is responsible for overseeing the DUF6 project in accordance with DOE Order 413.3A.

### **C.5.2 National Environmental Policy Act (NEPA)**

- C.5.2.1 With the exception of the Supplement Analysis, the Contractor shall be responsible for preparation of any additional NEPA documentation required to complete the scope of work. The Contractor shall advise DOE of the requirement to prepare additional NEPA documentation, shall provide DOE with draft NEPA documentation for review and comment, and shall incorporate DOE comments in the final NEPA document. The Contractor shall reproduce and distribute the appropriate number of final NEPA documents, as requested by the DOE. NEPA documents shall be prepared in accordance with 40 CFR 1500-1508, the Department's implementing regulations for NEPA, found at 10 CFR 1021, and DOE O 451.1B.
- C.5.2.2 The Contractor shall support the NEPA compliance activities of the DOE. The support will include, but may not be limited to, responding to questions from the NEPA compliance team, sending one or more subject matter experts to support the DOE at public meetings, and providing updated data to the NEPA team at specified intervals. The NEPA team may include federal personnel as well as non-federal personnel affiliated with contract vehicles separate from this contract.

### **C.5.3 Regulatory Management**

- C.5.3.1 The Contractor shall be responsible for permits, applications, licenses, and other regulatory documents required by the contract (See Section H and Section I). The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Regulatory and Permitting Management Plan [D-5]** (see **Section F, Table F-1**). This plan shall describe the strategy for ensuring that the conversion facilities are operated in accordance with applicable requirements found in the Section I clause entitled "DEAR 970.5204-2 Laws, Regulations, and DOE Directives." The plan shall include a schedule of regulatory and permitting actions. The schedule shall identify major milestones and critical actions necessary to ensure that licenses and permits have been obtained.
- C.5.3.2 The Contractor shall incorporate the following requirements, at a minimum in the **Regulatory and Permitting Management Plan [D-5]** (see Section F, Table F-1) and shall comply with the requirements and all amendments:

- C.5.3.2.1 The agreement, dated February 24, 1998, entitled “Ohio EPA Director’s Final Findings and Orders” (DFF&O) as amended on June 24, 2005 and February 21, 2008 (See Section J, Attachment J-3).
  - C.5.3.2.2 The letter, “To William Murphie, PPPO, from Margaret M. Guerriero, Director, Waste, Pesticides and Toxics, US EPA, TSCA Approval for Storage for Disposal of PCB Bulk Product (Mixed) Waste (paint with 50 ppm or greater PCBs on cylinders containing radioactive material) U.S. DOE Portsmouth Gaseous Diffusion Plant, Portsmouth, OH, June 1, 2005 (See Section J, Attachment J-3).
  - C.5.3.2.3 The Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet Agreed Order, October 3, 2003 (See Section J, Attachment J-3.)
- C.5.3.3 At the request of DOE, the Contractor shall negotiate in good faith and become a party and signatory to such future regulatory agreements or orders, as DOE may deem appropriate for the work performed pursuant to this contract.

#### **C.5.4 Quality Assurance Program**

At time of transition, DOE will have developed a DUF6 Operations- Quality Assurance Program (QAP) in accordance with American Society of Mechanical Engineers (ASME) NQA-1 2000 Quality Assurance Requirements or ASME NQA-1 2004 and addenda through 2007. Although the DOE Office of Environmental Management (EM) requires that ASME NQA-1-2004, and addenda through 2007 be implemented, the Department is evaluating the feasibility of revising the current DUF6 Operations Project Quality Assurance Plan (PQAP) to meet these requirements.

The Contractor shall adopt the existing PQAP as an interim program until such time as DOE approves any proposed changes. The adopted program, and any contractor changes, shall be approved by DOE prior to the Contractor performing any work affected by revisions to the PQAP.

##### **C.5.4.1 Quality Assurance Management Plan**

The Contractor shall prepare/revise, submit for DOE approval, and execute the approved organization-specific **Quality Assurance Management Plan (QAMP) [D-6]** (see Section F, Table F-1) describing how the applicable requirements of the EM QAP will be implemented and passed down to lower-tier organizations. The Contractor’s quality assurance program shall be applied to all work performed by the

Contractor (e.g., mission, safety, and health). The Contractor's implementation of a specific QAP shall not relieve the Contractor from any responsibility to furnish the contracted items/services in full conformance with all the terms of the contract, 10 CFR 830 or other applicable laws and regulations. If there is any inconsistency between the specific QA program and any other terms of the contract, the more restrictive requirements apply.

#### C.5.4.2 Site Assurance System Description

The Contractor shall develop and incorporate into their QAMP and QA Program, submit for DOE approval, and implement the approved **Site Assurance System Description [D-7]** (see Section F, Table F-1), as required by DOE O 226.1A, Implementation of DOE Oversight Policy. This document shall identify and address program and performance deficiencies, opportunities for improvement, and processes to report deficiencies to the responsible managers and authorities. The Assurance System Description shall establish and effectively implement corrective and preventive actions, and share lessons learned across all aspects of the work scope. The Contractor shall annually review and update, as appropriate, their QAMP and the Site Assurance System Description and resubmit updates to DOE for approval.

#### C.5.4.3 Issues Management System

The Contractor shall develop and implement a comprehensive Issues Management System using a "zero-threshold" level for the identification, assignment of significance category, and processing for all issues raised across all levels of the Contractor's organization. The significance assigned to the issues shall be the basis for all actions taken by the Contractor in correcting the issue from initial causal analysis, reviews for reporting to DOE, through completion of Effectiveness Reviews, if required, based on the seriousness of the issue.

### C.5.5 **Conversion Product Management**

The Contractor is responsible for and shall perform activities related to disposition of conversion products, which are to be used/reused. The Contractor shall be responsible for the sale of AqHF and disposition of any other conversion product, if specifically directed by the DOE per Section H, clause entitled "Sales of Conversion Products and DUF6 Inventory." The Contractor shall ensure that the product presented for sale meets the DOE-authorized free release limit of radioactive material contained therein. These activities include product generation, transportation, storage, packaging, and disposition. During execution of the OTSP, the Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Conversion Product Management Plan [D-8]** (see Section

F, Table F-1). This plan shall describe how each identified product is generated and how it is to be managed from the point of generation to disposition. The plan shall include the quantities, methods, and timetables for the management of each product stream. The plan shall be maintained and revised whenever changes are made that affect product management. Changes to the plan shall be subject to CO approval.

### C.5.6 Waste Management

C.5.6.1 The Contractor is responsible for and shall perform activities related to waste management, which include waste generation, packaging and transportation (per requirements in DOE O 460.1B and DOE O 460.2A), storage, treatment, waste minimization, waste certification, and disposal. During execution of the OTSP, the Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Waste Management Plan [D-9]** (see Section F, Table F-1). This plan shall describe how each identified waste is generated and how it is to be managed from the point of generation to disposal. The plan shall include the quantities, methods, and timetables for the management of each waste stream. The plan shall be maintained and revised whenever changes are made that affect waste management. Changes to the plan shall be subject to CO approval.

C.5.6.2 The DOE shall be responsible for ensuring a waste disposition pathway exists for radioactive waste and/or the radiological component of any mixed wastes. Disposition pathways may include a DOE-owned and operated site or a privately-owned and operated site. The Contractor shall assist the DOE in identifying disposition pathways and in preparing documentation necessary to demonstrate each waste stream's compliance with the receiver site's waste acceptance criteria (WAC). The Contractor shall also assist DOE with preparation of additional documentation (e.g., certification program descriptions, briefing slides, etc. for interactions with DOE and/or U.S. Environmental Protection Agency (EPA) officials, state governments, members of the public, and/or representatives from the candidate waste disposal sites.)

#### C.5.6.3 Waste Disposition Requirements

The Contractor shall store, characterize, process, package, transport, and dispose of waste in accordance with applicable laws, regulations, and DOE directives. The types of waste include, but are not limited to: low-level waste (LLW), mixed low-level waste (MLLW), industrial waste, sanitary waste, and hazardous waste. Waste is considered disposed of when it has been shipped to, and accepted for final disposition at, a properly licensed and permitted disposal site. The Contractor shall avoid generating waste with no pathway for disposal.

The uranium oxide converted product shall be disposed of at federal and/or commercial waste disposal sites that are (is) properly licensed and permitted and that meet federal, state and local regulations, in accordance with the Final Supplement Analysis for Location(s) to Dispose of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride (DOE/EIS-0359-SA1 and DOE/EIS-0360-SA1) (SA) and amended Record of Decision (ROD). If a disposal site becomes available that is different from that specified in the amended ROD, the Contractor shall assist DOE in evaluating it as an alternative (e.g., cost/benefit analyses, NEPA documentation). On-site disposal will not be utilized.

For LLW and/or MLLW resulting from conversion operations, the Contractor shall:

1. Manage and dispose of waste in accordance with the Contractor Requirements Document (Attachment 1) of DOE Order 435.1.
2. Establish and maintain an approved waste acceptance certification program, in accordance with disposal site requirements.
3. Prepare exemption requests in accordance with DOE Order 435.1 and associated DOE manuals and guides for use of commercial disposal facilities, if commercial disposal options are being pursued.
4. Prepare waste profiles as required and obtain disposal site approval.
5. Obtain final waste form certification from disposal sites. The Contractor will ensure the final uranium oxide waste form is compliant with the disposal site waste acceptance criteria (WAC), applicable site permits and licenses and RCRA Land Disposal Restrictions (LDR).
6. Prepare required procedures, work plans, waste shipping forecasts for processing and disposing of waste.
7. Process and treat the waste as required to meet disposal site WAC and LDR, as applicable.
8. Utilize disposal-site approved disposal containers for the waste.
9. Coordinate with the disposal sites and be the shipper of record for waste being shipped to disposal sites.
10. Prepare the waste for transport to the disposal facility.
11. Transport the waste from the conversion facility to the proposed nuclear waste disposal site, in accordance with the SA and the amended ROD.
12. Provide interim storage for waste that is ready for disposal until the Contractor can arrange shipping. Shipments of the waste shall not commence before until issuance of the amended ROD by DOE.

13. Load and transport the waste for disposal.
14. Dispose of the waste.

Start-up and operation of the conversion facility and storage of the waste shall not be constrained by uncertainty associated with the selection of the disposal sites as documented in the final issuance of the SA and amended ROD.

For hazardous and industrial waste, the contactor shall:

1. Prepare waste profiles as required and obtain disposal site approval.
2. Obtain final waste form certification from disposal sites.
3. Prepare all required procedures, work plans, etc., for processing hazardous and industrial waste.
4. Process and treat the waste as required to meet disposal site WAC and RCRA LDR, as applicable.
5. Procure disposal site approved disposal containers for the hazardous and industrial waste.
6. Coordinate with the disposal sites and be the shipper of record for hazardous and industrial waste being shipped to disposal sites.
7. Prepare the hazardous and industrial waste for transport to the disposal facility.
8. Provide interim storage for hazardous and industrial waste ready for disposal until the Contractor can arrange shipping.
9. Load and transport hazardous and industrial waste for disposal.
10. Dispose of the hazardous and industrial waste.

#### C.5.6.4 Waste Interfaces

The Contractor shall maintain liaison with the following:

1. DOE and contractors at federal and/or commercial LLW/MLLW disposal facilities. Activities include:
  - a. Implementation of DOE Order 435.1.
  - b. Maintenance of the Waste Certification Program.
  - c. Development of waste disposal profiles for LLW and MLLW.
  - d. Characterization and certification of LLW and MLLW.
  - e. Shipment and disposal of LLW and MLLW.
  - f. Support with preparation of documentation for meetings with DOE, US EPA officials, State governments, members of the public, and/or representatives from the waste disposal sites.

2. Other DOE sites for:
  - a. Consultation support for other DOE waste generators to ensure proper waste preparation and demonstration activities.
  - b. Integration activities as necessary for transfer of waste, samples, etc. to or from other sites.
  - c. DOE Office of Disposal Operations integration activities, e.g., annual waste forecasts, bi-weekly LLW/MLLW conference calls, and lessons learned.
  - d. DOE's Office of Health, Safety and Security, and the Office of Disposal Operations regarding the preparation of commercial exemptions, as appropriate, in accordance with DOE Order 435.1 and implementing documents.

#### C.5.6.5 Waste Disposition Alternatives

The baseline approach is for the uranium oxide powder to be compressed in a roll compactor to reduce its volume, be loaded into empty or heel cylinders retrofitted with flanged filling nozzles, and moved into an airlock before exiting the process building. The cylinders will then be loaded into gondola railcars or flat bed trucks for transport to a disposal site. As directed by the Department, the Contractor shall perform value engineering and cost benefit studies to evaluate alternate packaging, loading, transportation, transloading and disposal alternatives, to reduce the cost of waste disposition.

### C.5.7 Integrated Safety Management

- C.5.7.1 Protection of workers, the public, and the environment are fundamental responsibilities of the Contractor and a critically important performance expectation. The Contractor's Environmental, Safety, and Health (ES&H) program shall be operated as an integral and visible part of how the organization conducts business. A key element will be to implement DOE Policy 450.4, "Safety Management System Policy," which includes prioritizing work planning and execution, establishing clear ES&H priorities, and allocating the appropriate level of trained and qualified resources to address programmatic and operational considerations. The Contractor shall ensure that cost reduction and efficiency efforts are fully compatible with ES&H performance.
- C.5.7.2 The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Integrated Safety Management System Plan (ISMS) [D-10]** (see Section F, Table F-1). The Contractor shall provide updates to this plan, as needed, and submit to DOE for approval. The plan shall be prepared in accordance with the Section I clause entitled "DEAR

952.223-71 Integration of Environment, Safety, and Health into Work Planning and Execution.” Documentation of the plan shall describe how the Contractor will (1) define the scope of work; (2) identify and analyze hazards associated with the work; (3) develop and implement hazard controls; (4) perform work within controls; and (5) provide feedback on the adequacy of controls and continue to improve safety management. The plan should address the environmental management system (DOE O 450.1A), and radiation protection (10 CFR 835). The Contractor shall manage and perform work in accordance with this plan.

- C.5.7.3 The Contractor shall perform activities in compliance with applicable health, safety, and environmental laws, orders, regulations, and national consensus standards; and governing agreements, permits, and orders executed with regulatory and oversight government organizations. The Contractor shall take necessary actions to preclude serious injuries and/or fatalities, keep worker exposures and environmental releases as low as reasonably achievable below established limits, minimize the generation of waste, and maintain or increase protection to the environment, and public and worker safety and health.
- C.5.7.4 Incorporating integrated line management, the Contractor shall put in place a system that clearly communicates the roles, responsibilities, and authorities of line managers. The Contractor shall hold line managers individually accountable for implementing necessary controls for safe performance of work in their respective areas of responsibility. The Contractor shall establish effective management systems to identify deficiencies, resolve them in a timely manner, ensure that corrective actions are implemented (addressing the extent of conditions, root causes, and measures to prevent recurrence), and prioritize and track commitments and actions. The Contractor shall evaluate ES&H performance in selection of its subcontractors and incorporate ES&H requirements into subcontracts.
- C.5.7.5 The Contractor shall prepare/revise, submit for DOE approval and execute the approved **Worker Safety and Health Program (WSHP) [D-11]** (see Section F, Table F-1) that describes the methods for implementing the requirements of Subpart C of 10 CFR 851, and upon approval execute the program.
- C.5.7.6 Final **Documented Safety Analysis (DSA)** and **Technical Safety Requirements (TSR) [D-12]** (see Section F, Table F-1) for conversion and cylinder yard operations will be approved by DOE prior to ORR. During transition, the Contractor will be expected to review and adopt the DSAs and TSRs. The Contractor shall operate the facilities in accordance with the DOE approved DSAs and TSRs. The Contractor shall provide annual updates to these documents as required by 10 CFR 830.302. The

DSA updates for the Portsmouth and Paducah sites shall evaluate hazards, including nuclear, chemical, and natural phenomena hazards, and assess the impact of these events on the safe operation of the conversion facilities.

C.5.7.7 Safety-Significant Systems, Structures, and Components (SS SSCs) shall comply with appropriate codes and standards identified in DOE Guide 420.1, March 2000. The following components have been identified as safety-significant based on the hazard analyses and are documented in the current DSAs. Refer to the DOE approved DSAs for Portsmouth and Paducah.

- Autoclave containment boundary
- Autoclave isolation valves
- DUF6 piping pressure boundary
- UF6/ UO<sub>2</sub>F<sub>2</sub> detectors
- Hydrogen detectors
- Conversion Building hydrogen isolation valve
- Hydrogen piping pressure boundary
- HF receiver tanks
- HF receiver tank isolation valves
- HF vapor detectors
- HF storage tanks
- HF storage tank isolation valves
- Secondary HF liquid confinement
- Aqueous HF piping pressure boundary
- Off-gas piping pressure boundary
- Vehicle barriers
- Independent Safety System
- Conversion Unit
- Cylinder Evacuation Room (CER) cylinder temperature element
- Conversion Building
- Standard DUF6 feed cylinder
- Cylinder Transfer System CER DUF6 header isolation valve
- Grading and curbing
- Fire suppression system

### C.5.8 Radiation Protection

The Contractor shall be fully responsible for radiation protection and shall prepare/revise, submit for DOE approval, and execute the approved **Radiation**

**Protection Plan (RPP) [D-13]** (see Section F, Table F-1) in accordance with 10 CFR 835.

### C.5.9 Security

The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Site Security Plan [D-14]** (see Section F, Table F-1). The Contractor shall also provide updates to this plan for DOE approval, as needed. This document shall be a compendium of plans for meeting the DOE safeguards and security requirements, including DOE Cyber Security Management Program (DOE O 205.1A), Identifying Classified Information (DOE O 475.2, DOE Manual 475.1-B), and Unclassified Foreign Visits and Assignments (DOE O 142.3). The plan shall include the contractor's methodology for physical protection of the conversion facilities, information security, and personnel security. The Site Security Plan shall be prepared in accordance with the DOE Order 470 series requirements as they apply to the conversion facilities as required by the Section I clause entitled "DEAR 970.5204-2 Laws, Regulations, and DOE Directives." The plan shall include protection of information from disclosure pursuant to Export Controlled Information (ECI) in accordance with 15 CFR 774 and Unclassified Controlled Nuclear Information (UCNI) requirements in 10 CFR 1017. The plan shall also include a sabotage vulnerability assessment covering aspects of facility operation, which might have an unacceptable impact on personnel, the public, or the environment. The Site Security Plan shall be coordinated with other onsite activities, including Emergency Management (DOE O 151.1C), to ensure adequate protection of the conversion facilities and uranium-bearing materials. The local DOE cognizant security authority shall approve the Site Security Plan and updates.

### C.5.10 Emergency Management

- C.5.10.1 The Contractor shall provide support to DOE by participating in the site's Emergency Management program including planning, preparedness, response, recovery, and readiness assurance per DOE O 151.1C.
- C.5.10.2 The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Site Emergency Plan [D-47]** (see Section F, Table F-1) and implementing procedures in coordination with the site's Emergency Management Program.
- C.5.10.3 The Contractor shall coordinate with USEC or DOE contractor and provide adequate staff to support the Emergency Operation Center efforts for its operations, and ensure adequate support is available to respond to an emergency. The Emergency Operation Center for the site is provided by USEC with specific support from DOE and DOE contractors for DOE activities.

- C.5.10.4 The Contractor shall coordinate with USEC or DOE contractor in developing and participating in a drill and exercise program that is compliant with DOE Order 151.1C. The Contractor must participate in the site's training, drill/exercise program.
- C.5.10.5 The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Emergency Planning Hazard Surveys [D-48]** (see Section F, Table F-1) and **Emergency Planning Hazard Assessments [D-49]** (see Section F, Table F-1) at least every three years or whenever a major substantial change occurs. The Contractor shall develop and update as needed, site/facility-specific Emergency Action Levels (EALs) for the spectrum of potential Operational Emergencies identified by the Emergency Planning Hazard Assessment to include protective actions for implementation in the Site Emergency Program.
- C.5.10.6 The Contractor shall also prepare/revise and submit for DOE approval timely **Emergency Readiness Assurance Plan (ERAP) [D-50]** (see Section F, Table F-1) information to be included in the Site Integrated ERAP for DOE submittal per DOE Order 151.1C.
- C.5.10.7 The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Continuity of Operations Plan (COOP) [D-51]** (see Section F, Table F-1) in coordination with the site's COOP program per DOE O 150.1.

### **C.5.11 Material Safeguards**

The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Nuclear Materials Control and Accountability Plan [D-15]** (see Section F, Table F-1 integrating DOE P 470.1, Integrated Safeguards and Security Management Policy, in accordance with DOE Manual 470.4-6. The Contractor shall provide updates to this plan as needed, and submit for DOE approval. The plan shall include the Contractor's methodology for material control and accountability for uranium feed and conversion products. The DOE cognizant security authority must approve the Nuclear Materials Control and Accountability Plan, and any updates, prior to the Contractor's assuming cylinder surveillance and maintenance responsibilities.

### **C.5.12 Records Management**

- C.5.12.1 The Contractor shall conduct records management in accordance with Title 44 USC, Chapters 21, 29, 31, 33, and 35; 36 CFR, Chapter 12, Subchapter B (Records Management); DOE O 243.1 (Records Management Program) and DOE O 243.2 (Vital Records), and any other DOE requirements as directed by the CO. These functions include, but are not limited to: tasks associated with creation/receipt, maintenance, storage/preservation, protecting, scheduling, indexing and dispositioning

active and inactive records; retrieving records from on- and off-site storage facilities, and supporting ongoing Freedom of Information Act (FOIA), Privacy Act, Energy Employee Occupational Illness Compensation Program (EEOICPA) and legal discovery requests.

The Contractor shall prepare/revise, submit for DOE approval, and execute the approved **Records Management Plan [D-16]** (see Section F, Table F-1) consistent with records management regulations, including Section I clause entitled “DEAR 970.5204-3 Access To and Ownership of Records” and Section H clause entitled “Privacy Act Systems of Records.” The Records Management Plan is a high-level program document that shall describe, at a minimum: a clear delineation between Government-owned and contractor-owned records; how the Contractor will manage all life-cycle phases of Government-owned records; the contractor organization in charge of the records management program; provision of records management training to all contractor personnel; the safeguarding, protection and maintenance of records (including records containing sensitive information, or classified, if applicable); the use of DOE Records Control Schedules; the Contractor’s procedures for final disposition of records (e.g., via transfer to a Federal Records Center, destruction, or transfer to another DOE contractor); and the Contractor’s procedures for implementation of the records management program as a whole, including relationships with other programs that cannot function properly without sound records search and retrieval capability (e.g., processing claims received by the Department of Labor pursuant to the EEOICPA). The Records Management Plan shall be submitted to the CO for review/approval by the Records Management Field Officer.

- C.5.12.2 All records acquired or generated by the Contractor in performance of this contract, including, but not limited to, records from a predecessor contractor (if applicable) and records described by the contract as being maintained in Privacy Act systems of records, except for those defined as contractor-owned (Section I clause entitled “DEAR 970.5204-3 Access to and Ownership of Records”), shall be the property of the Government.
- C.5.12.3 The Contractor shall preserve and disposition records in accordance with National Archives and Records Administration (NARA)-approved records disposition schedules (DOE Record Disposition Schedules), as posted on the DOE Office of the Chief Information Officer (OCIO) Records Management web page. *Note: Records Retention standards are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor (DEAR 970.5204-3).*
- C.5.12.4 The statutory definition of a “record,” as per 44 USC 3301, applies to all departmental records including those created, received, and maintained by all contractors pursuant to their contracts. Virtually all recorded

information in the custody of the Government (including information created by contractors on behalf of the Government) regardless of its media (hard copy, machine-readable, microfilm, or electronic) is considered to be “Government” records. Records include not only the deliverables specified by the contract, but can also include things such as any supporting or backup data used to create the contract deliverables, and related health, safety, environmental, quality assurance information, etc.

### C.5.13 Property Management

C.5.13.1 The Contractor shall manage personal property in accordance with the property clauses of this contract, 41 CFR 109, and DOE Order 580.1, and shall prepare/revise, submit for DOE information or approval, and execute the following items, (see Section F, Table F-1):

- **Property Management Plan [D-17];**
- **Report of Excess Property to GSAXcess [D-18];**
- **Report of Annual Physical Inventory Results [D-19];**
- **Report of Loss, Damage, Destruction or Theft [D-20];**
- **Property Information Database System (PIDS) [D-21];**
- **Personal Property Scorecard Plan-New Fiscal year [D-22];**
- **Personal Property Scorecard Report- Past Fiscal Year [D-23];**
- **Reports of Sales and Exchanges [D-24];**
- **Vehicle Fleet Reports [D-25].**

C.5.13.2 The Contractor shall manage real property in accordance with 41 CFR 102 and DOE Order 430.1B, and shall perform the following activities:

C.5.13.2.1 Review real property records, including leases, licenses, land agreements, contracts, etc. associated with conversion facility operations at the Portsmouth or Paducah sites;

C.5.13.2.2 Prepare an **Inventory of Active Real Property Records [D-26]** (see Section F, Table F-1) for review by a Certified DOE Realty Specialist;

C.5.13.2.3 Maintain, update, and validate the **Facilities Information Management System (FIMS) [D-27]** (see Section F, Table F-1) database; and

C.5.13.2.4 Prepare/revise, submit for DOE information, concurrence, or approval, and execute the following items (refer to Section F – Deliveries or Performance for additional details):

- **Real Property Procedures [D-28];**
- **FIMS Reporting [D-29];**
- **Real Property Asset Management Scorecard Reporting [D-30];**
- **“Draft” Ten Year Comprehensive Site Plan [D-31];**
- **General Services Administration (GSA) Reporting [D-32];**
- **Other Real Property Reporting [D-33];**
- **“Final” Ten Year Comprehensive Site Plan [D-36], as needed**

#### **C.5.14 Critical Interfaces and Integration**

C.5.14.1 The Contractor is one of multiple entities performing work under the direction or permission of DOE at each site. In general, other DOE site contractors or the United States Enrichment Corporation (USEC) are responsible for aspects of the larger site, and prior to completion of transition, the UDS Incumbent Contractor is responsible for aspects within the areas under their direct control, including the cylinder yards. The Contractor shall interface with many other entities for utilities and services to enable successful completion of conversion operations under this contract. The nature of those interfaces with other DOE site contractors and USEC are described in Section J, Attachment J-5, entitled “DUF6 Services & Contract Interface Requirements Matrix.”

C.5.14.2 The Contractor shall support and actively participate in periodic meetings between the DOE, DOE site contractors, and USEC to coordinate and integrate site activities and issues. The Contractor shall prepare and submit a summary of each meeting and assigned actions, which may be reviewed by the DOE. Meetings described in Section J, Attachment J-5, entitled “DUF6 Services & Contract Interface Requirements Matrix,” are expected to occur no less frequently than monthly; however, they may occur more frequently and shall be attended by a senior manager from the Contractor’s organization as appropriate, or as directed by the Contacting Officer Representative (COR).

C.5.14.3 The Contractor shall establish a management office with personnel physically located at Lexington, Kentucky for coordination with the PPPO. This office shall provide the resources to coordinate and manage the administrative activities of the conversion facility operations at Portsmouth and Paducah sites through a single, point-of-contact Project Manager as identified in Section H clause entitled “Key Personnel.” This individual and staff shall provide at a minimum functions of accounting, finance, budget, and senior leadership to interface with the DOE PPPO Manager, the DOE DUF6 FPD, and the DOE CO. All contract deliverables will be submitted through this office to the PPPO.

## C.6 CYLINDER MANAGEMENT

### C.6.1 Cylinder Information Database (CID) Management

The CID contains cylinder defect characterization, contents, inspection status, S&M activities, and location for the DOE-owned UF6 inventory at the two sites. The Contractor shall maintain and update the CID beginning on the date the Contractor assumes responsibility for cylinder management as designated by the CO at the end of the Mobilization and Transition Phase. The Contractor shall generate cylinder information or cylinder content reports as requested by DOE to support project and program requirements.

### C.6.2 Cylinder Surveillance and Maintenance (S&M)

C.6.2.1 The Contractor shall perform surveillance and maintenance for the DOE inventory of DUF6, low-enrichment uranium (LEU) hexafluoride (UF6), normal UF6, and heel and empty cylinders. During execution of the OTSP, the Contractor shall review the existing approved **Cylinder Surveillance and Maintenance Plan [D-34]** (see Section F, Table F-1) and either accept or revise this plan. Any revisions must be approved by the CO. The Contractor shall provide updates to this plan, as needed, and submit for DOE approval. This plan must be accepted by the Contractor or any revisions approved by DOE prior to the Contractor’s assuming S&M responsibility and must address the current mission, safety, and regulatory requirements (refer to the DUF6 Operations website). *Note: The Site Security Plan [D-14] and the Nuclear Materials Control and Accountability Plan [D-15] must be approved prior to transition of cylinder surveillance and maintenance.*

C.6.2.2 Once cylinder S&M activities have been transitioned, the Contractor shall perform activities necessary to manage the DOE UF6 cylinder inventory, including required cylinder inspections, maintenance of the existing UF6 cylinder yards, and disposition of empty and heel cylinders. In addition, the Contractor if and when necessary, the contractor shall be required to take receipt of newly generated DUF6 cylinders from U.S. commercial enrichers. At the direction of DOE, the Contractor shall perform DUF6,

LEU or normal assay cylinder management, movements, and transfers as necessary to support other DOE programs.

- C.6.2.3 The Contractor shall provide a plan to transport the limited population of cylinders smaller than 30 inches in diameter to Portsmouth, and subsequently transfer them to another DOE site contractor that has the responsibility to disposition cylinders less than 30 inches in diameter. This plan shall be a section in the **Waste Management Plan [D-9]** (see Section F, Table F-1) and be executed upon approval by the CO.
- C.6.2.4 The Contractor shall develop and propose to the DOE acceptance criteria for commercial DUF6 feed material that would not impact the long-term viability of conversion operations. The proposed acceptance criteria will be provided for DOE approval within one year after contract award.

## C.7 RELATED SERVICES

In addition to the services specifically described in other provisions of this Statement of Work, the Contractor shall perform services as DOE and the Contractor shall agree in writing that will be performed from time to time under this contract at Paducah or Portsmouth, or elsewhere, as follows:

- C.7.1 Services incidental or related to the services described in other provisions of this Statement of Work; and
- C.7.2 Services using existing or enhanced facilities and capabilities for the NRC under agency agreements between NRC and DOE.

**PART I – THE SCHEDULE**

**SECTION D**

**PACKAGING AND MARKING**

**TABLE OF CONTENTS**

D.1	PACKAGING.....	D-2
D.2	MARKING.....	D-2
D.3	SECURITY REQUIREMENTS.....	D-2

## SECTION D

### PACKAGING AND MARKING

#### D.1 PACKAGING

- (a) Preservation, packaging, and packing for shipment or mailing of all work (except for those items where packaging requirements are specified elsewhere in the contract) delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).
- (b) Except for those reports where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer (CO).

#### D.2 MARKING

- (a) Each package, report or other deliverable shall be accompanied by a letter or other document which:
  - (1) Identifies the contract by number under which the item is being delivered.
  - (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
  - (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report, or other deliverable being delivered to a party other than the CO, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the CO.

#### D.3 SECURITY REQUIREMENTS

The Contractor shall comply with the security requirements for packaging, marking, mailing, and shipping classified materials (if any) as prescribed by applicable U.S. Department of Energy (DOE) safeguards and security directives.

**PART I – THE SCHEDULE**

**SECTION E**

**INSPECTION AND ACCEPTANCE**

**TABLE OF CONTENTS**

E.1	FAR 52.246-5 INSPECTION OF SERVICES- COST-REIMBURSEMENT (APR 1984) .....	E-2
E.2	INSPECTION AND ACCEPTANCE.....	E-2

**SECTION E**

**INSPECTION AND ACCEPTANCE**

**E.1 FAR 52.246-5 INSPECTION OF SERVICES- COST-REIMBURSEMENT (APR 1984)**

- (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during Contract performance and for as long afterwards as the Contract requires.
- (c) The Government has the right to inspect and test all services called for by the Contract, to the extent practicable at all places and times during the term of the Contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with Contract requirements, the Government may require the Contractor to perform the services again in conformity with Contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce any fee payable under the Contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the Contract for default.

**E.2 INSPECTION AND ACCEPTANCE**

- (a) Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR) identified by the Contracting Officer (CO) as responsible for the product, report, or service being delivered, or any duly authorized DOE representative identified by separate letter.
- (b) Acceptance of all work and effort under this contract (including deliverables in Section F, Table F-1) shall be accomplished by the CO, COR, or any other duly authorized Government representative identified by separate letter. Items, services, and deliverables under this contract shall meet applicable contract quality and quantity standards to be accepted.

**PART I- THE SCHEDULE**

**SECTION F**

**DELIVERIES OR PERFORMANCE**

**TABLE OF CONTENTS**

F.1 FAR 52.242-15 STOP-WORK (AUGUST 1989) Alternate I (APR 1984).....F-2

F.2 TERM OF CONTRACT.....F-3

F.3 PRINCIPAL PLACE OF PERFORMANCE.....F-3

F.4 CONTRACT CLOSE-OUT.....F-3

F.5 SCHEDULE OF PERFORMANCE OF SERVICES AND DELIVERABLES.....F-3

**ATTACHMENTS**

TABLE F-1 DELIVERABLES.....F-5

**SECTION F**

**DELIVERIES OR PERFORMANCE**

**F.1 FAR 52.242-15 STOP-WORK (AUGUST 1989) Alternate I (APR 1984)**

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—
- (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the termination clause of this Contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if—
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this Contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## F.2 TERM OF CONTRACT

- (a) Upon issuance of a Notice to Proceed from the Contracting Officer, the Contractor is expected to proceed with the Mobilization and Transition Phase which is estimated to be up to ninety days from Notice to Proceed.
- (b) The Basic Term of the Contract is 57 months from the end of the transition period.
- (c) Options 1 and 2 - For Performance of Hot Functional Testing during the Basic Term of the Contract. The Government has the unilateral right to exercise either or both of the following options.
  - 1. Option 1: Hot Functional Testing - Portsmouth, for work described in Section C, Statement of Work, Paragraph C.3.1.3.5.
  - 2. Option 2: Hot Functional Testing — Paducah, for work described in Section C, Statement of Work, Paragraph C.3.1.3.5.

## F.3 PRINCIPAL PLACE OF PERFORMANCE

The principal place of performance for the contract is Portsmouth, Ohio and Paducah, Kentucky with some management functions performed at an office located in Lexington, Kentucky.

## F.4 CONTRACT CLOSE-OUT

The Contractor shall submit a separate plan including budget and schedule for close-out of the contract 60 days prior to the end of the period of performance as specified in Section F clause entitled “Term of the Contract”. **The Contract Close-Out Plan [D-143]** (see Section F, Table F-1) shall include all remaining administrative matters necessary to close out the contract, including but not limited to: resolution of remaining and open litigation; audit of indirect costs; remaining records disposition required by the Government; or any other activities required by Section I, FAR 52.216-7, “Allowable Cost and Payment.”

## F.5 SCHEDULE OF PERFORMANCE OF SERVICES AND DELIVERABLES

The Contractor is expected to prepare a series of deliverables which define the conduct of the project, and which demonstrates that the Contractor is meeting DOE requirements.

The deliverables have been categorized into key plans, which provide integrated management and demonstrate knowledge of DOE requirements with important aspects of the project scope. The secondary category of deliverables provides DOE with specific reports pertaining to the management of government assets and specific reporting requirements.

Table F-1 Deliverables identifies each required deliverable and a frequency for submission after contract award. The Department will review and comment on each deliverable, and determine if the deliverable is acceptable. The CO will then issue a written notice that the deliverable is approved as Rev. 0. Any subsequent additions, modifications, or revisions must be submitted for review and comment prior to approval by the CO or designated representative.

**NOTE: Table F-1 is a listing of deliverables. Any deliverable that is required by any provision/clause of the contract that is not listed in Table F-1 does not relieve the Contractor of the requirement to provide that deliverable.**

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-1	Reserved				
D-2	Conversion Facilities Operations and Maintenance Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C. 3.1.3.5
D-3	Readiness Assessment (RA) Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.3.1.3.6
D-4	Project Management Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.1.1  If the proposed performance measurement system is not EVMS compliant, submit a plan which would demonstrate how this proposed system is EVMS compliant. Submit with proposal.
D-5	Regulatory and Permitting Management Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.3.1  This includes preparation of any required NEPA documentation.

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-6	Quality Assurance Management Plan (QAMP)	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.4.1
D-7	Site Assurance System Description	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.4.2
D-8	Conversion Product Management Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.5
D-9	Waste Management Plan	30 Days after Notice to Proceed.	CO	60 Days after Submittal	Re: Section C.5.6.1 Option to accept existing Plan or submit revised plan.
D-10	Integrated Safety Management System Plan	60 Days after Notice to proceed	CO	30 Days after Submittal	Re: Section C.5.7.2
D-11	Worker Safety and Health Program	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.7.5

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-12	Documented Safety Analyses (DSA) including Technical Safety Requirements	Submit Annual Updates as Required	CO	60 Days after Submittal	Re: Section C.5.7.6  The DSAs and TSRs in place at the time of transition will become the responsibility of the Contractor to update as necessary to meet the requirements of 10 CFR 830.
D-13	Radiation Protection Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.8
D-14	Site Security Plan	30 Days after Notice to Proceed	CO	60 Days after Submittal	Re: Section C.5.9
D-15	Nuclear Materials Control and Accountability Plan	30 Days after Notice to Proceed	CO	60 Days after Submittal	Re: Section C.5.11
D-16	Records Management Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.12

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-17	Property Management Plan	60 Days after Notice to Proceed	CO	30 Days after Submittal	Re: Section C.5.13.1 Following Notice to Proceed
D-18	Report of Excess Property to GSAXcess	As Required	INFORMATION ONLY	N/A	Re: Section C.5.13.1
D-19	Report of Annual Physical Inventory Results	Annually, by September 30	INFORMATION ONLY	N/A	Re: Section C.5.13.1
D-20	Report of Loss, Damage, Destruction or Theft	Per Occurrence	INFORMATION ONLY	N/A	Re: Section C.5.13.1
D-21	Property Information Database System (PIDS)	Annually, by December 1	INFORMATION ONLY	N/A	Re: Section C.5.13.1
D-22	Personal Property Scorecard Plan – New Fiscal year	Annually, by September 30	INFORMATION ONLY	30 Days After Submittal (Submitted to DOE-HQ for Approval)	Re: Section C.5.13.1
D-23	Personal Property Scorecard Report – Past Fiscal Year	Annually, by December 15	INFORMATION ONLY	30 Days After Submittal (Submitted to DOE-HQ for Approval)	Re: Section C.5.13.1

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-24	Report of Sales and Exchanges	Annually, by November 1	INFORMATION ONLY	N/A	Re: Section C.5.13.1
D-25	Vehicle Fleet Reports	As Required	INFORMATION ONLY	N/A	Re: Section C.5.13.1
D-26	Inventory of Active Real Property Records	As Required	DOE Certified Realty Specialist Concurrence Required/ Validation of Database required annually by April 15	10 Days After Submittal	Re: Section C.5.13.2.2
D-27	Facilities Information Management System (FIMS) Validation	Annually, by March 30	DOE Certified Realty Specialist Concurrence and Review Required	10 Days After Completion of Validation	Re: Section C.5.13.2.3
D-28	Real Property Procedures	60 Days after Contract Award		As Required	Re: Section C.5.13.2.4
D-29	FIMS Reporting	Multiple deliverables Throughout the Calendar Year	DOE Certified Realty Specialist Concurrence and Approval Required	N/A	Re: Section C.5.13.2.4

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-30	Real Property Asset Management Scorecard Reporting	Annually, by December 1	DOE Certified Realty Specialist Concurrence Required	15 Days After Submittal	Re: Section C.5.13.2.4 Submit 30 days before end of calendar quarter.
D-31	“Draft” Ten Year Comprehensive Site Plan	Annually, by March 30	DOE Certified Realty Specialist Concurrence Required	15 Days After Submittal	Re: Section C.5.13.2.4
D-32	General Services Administration (GSA) Reporting	As Required	DOE Certified Realty Specialist Concurrence Required	10 Days After Submittal	Re: Section C.5.13.2.4
D-33	Other Real Property Reporting	As Required	DOE Certified Realty Specialist Concurrence and Approval Required	10 Days After Submittal	Re: Section C.5.13.2.4
D-34	Cylinder Surveillance and Maintenance Plan	Review the Existing approved Plan and either accept or revise the Plan. Submit to DOE within 60 Days after Notice to Proceed		As Needed	Re: Section C.6.2.1
D-35	Risk Management Plan	60 Days after Notice to Proceed (with Baseline)	CO	30 Days After Submittal	Re: Section H.28 (b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-36	“Final” Ten Year Comprehensive Site Plan	Annually, by May 31	DOE Certified Realty Specialist Concurrence Required	30 Days After Submittal	Re: Section C.5.13.2.4
D-37	Reserved				
D-38	GFS/I Request	N/A	CO	30	Re: Section H.27(b)(1) 12 month projection is required
D-39	GFS/I Update	Quarterly		15	Re: Section H.27(b)(2) Submit 30 days before end of calendar quarter.
D-40	Baseline	60 Days after Notice to Proceed	CO	30	Re: Section H.28(b)(1)
D-41	Project Control Management System	60 Days after Notice to Proceed	CO	10	Re: Section H.28(b)(12)
D-42	Weekly/Monthly Status Reports	Weekly and Monthly		15	Re: Section H.28(c)(1) Monthly reports must be submitted within ten days from the end of the succeeding month.

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-43	Quarterly Critical Analysis Report (QCAR)	Quarterly		30	Re: Section H.28(c)(2) Quarterly reports must be submitted within 30 days from the end of the calendar quarter.
D-44	Interface Management Plan	60 Days after Notice to Proceed	CO	30	Re: Section C.5.4
D-45	Small Business Subcontracting Plan	With proposal	CO	30	Re: Section I.28 Annual updates must be submitted.
D-46	PAAA Compliance Plan	90 Days after Contract Award	CO	15	Re: Section H.35
D-47	Site Emergency Plan (integrated with USEC per Contract clause C.5.10)	60 Days after Contract Award		30 Days after Submittal	Re: Section C.5.10.2 Emergency Coordinator should be designated by Contractor.
D-48	Emergency Planning Hazard Survey	Tri-annual updates or as major changes occur		30	Re: Section C.5.10.5

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-49	Emergency Planning Hazards Assessments (EPHAs)	Tri-annual updates or as major changes occur		30 Days after Submittal	Re: Section C.5.10.5
D-50	Emergency Readiness Assurance Plan (ERAP)	Annual Update submitted by September 1 <sup>st</sup>		30 Days after Submittal	Re: Section C.5.10.6 ERAP information for input into the Site Integrated ERAP.
D-51	Continuity of Operations (COOP) or Business Recovery Plan	60 Days after Contract Award with Annual Updates thereafter	CO	30 Days after Submittal	Re: Section C.5.10.7 DOE Approval
D-52	Contractor Employee Compensation Plan, Portsmouth, OH	End of 90 –Day Mobilization and Transition Phase			Re: Section H.12(A)
D-53	Annual Contractor Salary-Wage Increase Expenditure Report, Portsmouth, OH	Annually			Re: Section H.12(D)(1)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-54	A List of the top five most highly compensated executive as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation and any subsequent change to their total cash compensation , Portsmouth, OH	Time of Contract Award And at time of any subsequent change			Re: Section H.12(D)(2)
D-55	Annual Report of Contractor Expenditure for Employee Supplemental Compensation through the department Workforce Information System (WFIS) Compensation and Benefit Module, Portsmouth, OH	Annual, No Later than March 1			Re: Section H.12(D)(3)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-56	Any additional compensation system self-assessment data	As requested by the Contracting Officer			Re: Section H.12(D)(3)(i)
D-57	Performance Self-Assessment of the Total Compensation System to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis, Portsmouth, OH	Annually			Re: Section H.12(D)(4)
D-58	Additional compensation self-assessment data	As requested by the Contracting Officer			Re: Section H.12(E)(3)(a)(i)
D-59	Any proposed major compensation program design changes , Portsmouth, OH	Prior to implementation			Re: Section H.12(E)(3)(a)(ii)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-60	Annual Compensation Increase Plan, Portsmouth, OH				Re: Section H.12(E)(3)(a)(iii)
D-61	Individual compensation actions, including initial and proposed changes to base salary and/or payments for Key Personnel under an Executive Incentive Compensation Plan, Portsmouth, OH	At time of initial actions At time of proposed changes		30	Re: Section H.12(E)(3)(a)(iv) and H.12(E)(3)(b)
D-62	Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk), Portsmouth, OH				Re: Section H.12(E)(3)(a)(v)
D-63	Employee Benefits Value Study, Portsmouth, OH	Every 2 year each for Grandfathered Employees and Non-Grandfathered Employees benefits			Re: Section H.12(F)(3)(a)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-64	Separate cost and plan design data comparison for postretirement benefits not addressed in Benefits Value Study	Every two years each for Grandfathered Employees and Non-Grandfathered Employees			Re: Section H.12(F)(3)(a)
D-65	Employee Benefits Cost Survey Comparison, Portsmouth, OH	Annually for each Grandfathered and Non-Grandfathered Employees			Re: Section H.12(F)(3)(b)
D-66	Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module.	No later than March 1 of the current calendar year			Re: Section H.12(F)(7)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-67	<p>For each pension plan or portion of a pension plan for which DOE reimburses cost:</p> <ul style="list-style-type: none"> <li>- Copies of IRS Form 5500 with schedules</li> <li>- Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan</li> </ul>	Within 9 months of the last day of the current pension plan year			Re: section H.12(G)(5), H.12(G)(5)(a), H.12(G)(5)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-68	Proposed Changes to pension plans and pension funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value	Prior to adoption of any changes	Prior to adoption		Re: Section H.12(G)(6)(a)
D-69	Non-statutory pension plan changes that may increase costs or liabilities and any proposed special programs and analysis of the impact of the special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value		Advance written approval prior to adoption		Re: H.12(G)(6)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-70	Annual Actuarial Evaluations for all Applicable Benefit Plans and certification, Portsmouth, OH	Annually			Re: Section H.13(C)
D-71	Workforce Transition Plan, Portsmouth, OH	Draft WF Transition Plan – 15 Days after Issuance of the Contract Notice to Proceed Final WF Transition Plan – 30 days after Issuance of the Contract Notice to Proceed			Re: Section H.14(A), H.14(A)(2)(a), H.14(A)(3)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-72	Description of any and all transition agreements;  Written communication plan with Portsmouth Contractors;  Estimated costs and detailed breakouts of the costs to accomplish workforce transition activities	Within 10 days after issuance of the Contract Notice to Proceed			Re: Section H.14(A)(1)(a), (b), (c)
D-73	Draft WF Transition Plan	With 15 days after issuance of the Contract Notice to Proceed			H.14(A)(2)(a)
D-74	Written Communication Plan with Employees	Within 15 days after issuance of the Contract Notice to Proceed			
D-75	Draft Transition Agreements, Portsmouth, OH	Within 30 days after issuance of the Contract Notice to Proceed			Re: Section H.14(A)(3)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-76	Final Transition Agreements, Portsmouth, OH	Within 60 days after issuance of the Contract Notice to Proceed.			Re: Section H.14.(A)(4) and H.14(A)(1)(a)
D-77	Reports regarding the Contractor's and its subcontractors' implementation of the hiring preferences	Weekly basis during Mobilization and Transition Phase  Remainder of Workforce Transition Period, submit biweekly  After Workforce Transition Period, within timeframes as requested by Contracting Officer			Re: Section H.14(A)(5)(a)  Section H.14(A)(5)(b)  Section H.14(A)(5)(c)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-78	Written Description of Process utilized in obtaining information regarding employees who have been identified as being at risk of being involuntarily separated, Portsmouth, OH	Within 6 months of the Contract Notice to Proceed			Re: Section H.14.(A)(6)
D-79	Copies of written agreements with USEC, LPP, and TPMC	Within 6 months of the Contract Notice to Proceed			Re: Section H.14(A)(6)
D-80	“Draft” Benefits Transition Plan, Portsmouth, OH	Within 20 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)
D-81	“Final” Benefits Transition Plan, Portsmouth, OH	Within 30 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-82	List of personnel responsible for transition of the UDS Pension Plan and other existing benefit plans and/or development of new benefit plans Portsmouth, OH	Within ten days after issuance of the Contract Notice to Proceed,			Re: Section H.14(B)(1)(a)(i)
D-83	Estimated costs and detailed breakouts of the costs to accomplish workforce transition, Portsmouth, OH	Within 10 days after issuance of Contract Notice to Proceed			Re: Section H.14(B)(1)(a)(iii)
D-84	List of information and documents requested pertaining to transition of the UDS Pension Plan and other existing benefit plans, Portsmouth, OH	Within 15 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-85	Detailed description of Plans and processes to ensure compliance with the requirements set forth in Clauses H.12 (E) and H.13(B), Portsmouth, OH	Within 20 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(c)(i)
D-86	Written description of how the existing pension and other benefit plans provided to employees will be amended or restated and/or description of any asset transfer and/or creation of new benefit plans, Portsmouth, OH	Within 30 days after issuance of the Contract Notice to Proceed (and as part of Benefits Transition Plan)			Re: H. 14(B)(1)(d)
D-87	“Draft” contractor Employee Compensation Plan, Portsmouth, OH	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(e)(i)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-88	Draft amendments or restatements of pension and other benefits plans, Portsmouth, OH	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(e)(ii)
D-89	Draft Restated Benefit Plans and draft SPDS, Portsmouth, OH	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(e)(ii)
D-90	Drafts of any new benefit plans and draft SPDS, Portsmouth, OH	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(e)(iii)
D-91	Draft transition agreements, Portsmouth, OH	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(e)(iv)
D-92	Executed transition agreements, Portsmouth, OH	Within two days of execution, but no later than the last day of the Mobilization and Transition Phase			Re: Section H.14(B)(1)(e)(iv)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-93	Proposed Final Version of amendments or restatements to pension plans and/or other benefit plans and SPDs and any new benefit plans and SPDs, Portsmouth, OH	No later than 60 days after the issuance of the Contract Notice to Proceed and prior to the adoption of the documents			Re: Section H.14(B)(1)(f)
D-94	Response to Contracting Officer's Comments, Portsmouth, OH	Within two days after receipt of comments			Re: Section H.14(B)(1)(g)
D-95	Documents relating to Benefit Plans, Portsmouth, OH	Promptly upon request by the Contracting Officer			Re: Section H.14(B)(2)(a)
D-96	Documents pertaining to implementation and compliance of compensation and benefit programs, Portsmouth, OH	Promptly upon request by the Contracting Officer			Re: Section H.14(B)(2)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-97	Contractor Employee Compensation Plan, Paducah, KY	End of 90 day Mobilization and Transition Phase			Re: Section H.20(A)
D-98	Annual Contractor Salary-Wage Increase Expenditure Report,, Paducah, KY	Annual			Re: Section H.20(D)(1)
D-99	A List of the top five most highly compensated executive as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation and any subsequent change to their total cash compensation, Paducah, KY	Time of Contract Award And at time of any subsequent change			Re: Section H.20(D)(2)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-100	Annual Report of Contractor Expenditure for Employee Supplemental Compensation through the department Workforce Information System (WFIS) Compensation and Benefit Module, Paducah, KY	Annual, No Later Than March 1			Re: Section H.20(D)(3)
D-101	Any additional compensation system self-assessment data, Paducah KY	As requested by the Contracting Officer			Re: Section H.20(D)(3)(i)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-102	Performance Self-Assessment of the Total Compensation System to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis, Paducah, KY	Annually			Re: Section H.20(D)(4)
D-103	Additional compensation system self-assessment data , Paducah, KY	As requested by the Contracting Officer			Re: Section H.20(E)(1)(i)
D-104	Any proposed major compensation program design changes, Paducah, KY	Prior to implementation			Re: Section H.20(E)(1)(ii)
D-105	Annual Compensation Increase Plan, Paducah, KY				Re: Section H.20(E)(3)(iii)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-106	Individual Compensation Actions, including initial and proposed changes to base salary and/or payments for Key Personnel under an Executive Incentive Compensation Plan, Paducah, KY	At time of initial action At time of proposed changes			Re: Section H.20(E)(3)(iv) and H.20(20)(3)(b)
D-107	Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk, Paducah, KY				Re: Section H.20(E)(3)(v)
D-108	Employee Benefits value Study (Ben-Val), Paducah, KY	Every two years for Grandfathered Employees and Non-Grandfathered Employees benefits			Re: Section H.20(F)(3)(a)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-109	Separate cost and plan design data comparison for postretirement benefits not addressed in the Employee Benefits Value Study, Paducah, KY	Every two years each for Grandfathered Employees and Non-Grandfathered Employees			Re: Section H.20(F)(3)(a)
D-110	Employee Benefits Cost Study Comparison, Paducah, KY	Annually			Re: Section H.20(F)(3)(b)
D-111	Report of Contractor Expenditures for Supplementary Compensation for previous calendar via the DOE Workforce Information System (WFIS) Compensation and Benefits Module, Paducah, KY	No later than March 1 of the current calendar year.			Re: Section H.20(F)(7)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-112	For each pension plan or portion of a pension plan for which DOE reimburses cost:  - Copies of IRS Form 5500 with schedules  - Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan. Paducah, KY	Within 9 months of the last day of the current pension plan year			Re: Section H.20(G)(5), H.29(G)(5)(b), H.20(G)(5)(c)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-113	Proposed Changes to pension plans and pension funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value, Paducah, KY	Prior to adoption of any changes			Re: Section H.20(G)(6)(a)
D-114	Non-statutory pension plan changes that may increase costs or liabilities and any proposed special programs and analysis of the impact of the special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, Paducah, KY	Advance written approval prior to adoption			Re: H.20(G)(6)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-115	Annual actuarial evaluations for all applicable benefit plans and certification., Paducah, KY	Annually			Re: Section H.21(C)
D-116	Workforce Transition Plan, Paducah, KY	Draft WF Transition Plan – 15 Days after Issuance of the Contract Notice to Proceed Final WF Transition Plan – 30 Days after Issuance of the Contract Notice to Proceed			Re: Section H.22(A)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-117	Description of any and all transition agreements;  Written Communication Plan with Paducah Contractors;  Estimated costs and detailed breakouts of the costs to accomplish workforce transition activities, Paducah, KY	Within 10 days after issuance of the Contract Notice to Proceed			Re: Section H.22(A)(1)(a), (b), (c)
D-118	Draft Workforce Transition Plan, Paducah, KY	Within 15 days after issuance of the Contract Notice to Proceed			Re: Section H.22(A)(2)(a)
D-119	Communication Plan, Paducah with Employees, KY	Within 15 days after issuance of the Contract Notice to Proceed			Re: Section H.22(A)(2)(b)
D-120	Draft transition agreement, Paducah, KY	Within 30 days after issuance of the Contract Notice to Proceed			Re: Section H.22(A)(3)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-121	Final Transition Agreements, Paducah, KY	Within 60 days after issuance of the Contract Notice to Proceed			Re: Section H.22(A)(4)
D-122	Reports regarding the Contractor's and its subcontractors' implementation of hiring preferences, Paducah, KY	<p>Weekly basis during the Mobilization and Transition Phase</p> <p>Biweekly basis during the remainder of the Workforce Transition Period</p> <p>After the Workforce Transition Period, within timeframes as requested by the Contracting Officer.</p>			<p>Re: Section H.22(A)(5)(a)</p> <p>Section H.22(A)(5)(b)</p> <p>Section H.22(A)(5)(c)</p>

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-123	Written description of process utilized for obtaining information regarding employees who have been identified as being at risk of being involuntarily separated, Paducah, KY	Within six months after the issuance of the Contract Notice to Proceed			Re: Section H.22(A)(6)
D-124	Copies of Written Agreements with USEC, PRS, and SST, Paducah, KY	Within six months after the issuance of the Contract Notice to Proceed			Re: Section H.22(A)(6)
D-125	"Draft" Benefits Transition Plan, Paducah, KY	Within 20 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)
D-126	Final Written Benefits Transition Plan, Paducah, KY	Within 30 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-127	List of personnel responsible for transition of UDS Pension Plan and other exiting benefit plans and/or development of new benefit plans, Paducah, KY	Within ten days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(a)(i)
D-128	Estimated costs and detailed breakouts of the costs to accomplish workforce transition, Paducah, KY	Within ten days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(a)(iii)
D-129	List of information and documents requested from UDS pertaining to transition of Pension plan, Paducah, KY	Within 15 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-130	Detailed description of plans and processes to ensure compliance with requirements set forth in H.20(E) and H.21(B), Paducah, KY	Within 20 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(c)(i)
D-131	Written description of how the existing pension and other benefit plans provided to employees will be amended or restated and/or description of any asset transfer and/or creation of new benefit plans, Paducah, KY	Within 30 days after issuance of the Contract Notice to Proceed (as part of the Benefits Transition Plan)			Re: Section H.22(B)(1)(d)
D-132	"Draft" Contractor Employee Compensation Plan, Paducah, KY	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(e)(i)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-133	Drafts amendments or restatements the pension and other benefit plans, Paducah, KY	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(e)(ii)
D-134	Draft Restated Benefit Plans and draft SPDs, Paducah, KY	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.14(B)(1)(e)(ii)
D-135	Drafts of any new benefit plans, Paducah, KY	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(e)(iii)
D-136	Draft transition agreements, Paducah, KY	Within 45 days after issuance of the Contract Notice to Proceed			Re: Section H.22(B)(1)(e)(iv)
D-137	Executed transition agreements, Paducah, KY	Within two days of execution, but no later than the last day of the Mobilization and Transition Phase			

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-138	Proposed Final Version of amendments or restatements to pension plans and/or other benefit plans and SPDs and any new benefit plans and SPDs, Paducah, KY	No later than 60 days after issuance of the Contract Notice to Proceed and prior to the adoption of the documents			Re: Section H.22(B)(1)(f)
D-139	Response to Contracting Officer's Comments, Paducah, KY	Within two days after receipt of comments			Re: Section H.22(B)(1)(g)
D-140	Documents relating to Benefit Plans, Paducah, KY	Promptly upon request by the Contracting Officer			Re: Section H.22(B)(2)(a)
D-141	Documents pertaining to implementation and compliance of compensation and benefit programs, Paducah, KY	Promptly upon request by the Contracting Officer			Re: Section H.22(B)(2)(b)

DELIVERABLE NUMBER	DELIVERABLE NAME	TABLE F-1 DELIVERABLES			CLAUSE(S)/REMARKS
		FREQUENCY	DOE APPROVAL	Number of Days Required for DOE REVIEW AND APPROVAL (Calendar Days)	
D-142	Contract Close-Out Plan	60 Days prior to the end of the Period of Performance		60	Re: Section F.6
N/A	Formal Record of Approved Changes	Submit with QCAR			Re: Section H.28(c)

**PART I – THE SCHEDULE**

**SECTION G**

**CONTRACT ADMINISTRATION DATA**

**TABLE OF CONTENTS**

G.1	CORRESPONDENCE PROCEDURES .....	G-2
G.2	SUBMISSION OF VOUCHERS/INVOICES .....	G-3
G.3	DOE CONTRACTING OFFICER'S REPRESENTATIVE (COR).....	G-4
G.4	CONTRACT ADMINISTRATION.....	G-4
G.5	CONTRACTOR'S POINT OF CONTACT.....	G-5

## SECTION G

### CONTRACT ADMINISTRATION DATA

#### G.1 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, all correspondence, reports and other documents submitted under this contract shall be subject to the following procedures:

- (a) Technical Correspondence. Technical correspondence concerning performance of this contract shall be addressed to the Department of Energy (DOE) Contracting Officer's Representative (COR) with an information copy of the correspondence to the Contracting Officer (CO). Technical correspondence pertains to issues relating to work effort of the contract (i.e. requests interpretation of contractual requirements for performance) or requests approval of reports, drawings or other work products.
- (b) Patents/Technical Data Correspondence. The Chicago Operations Office, acting through the Intellectual Property Law Division of the Office of Assistant Manager for Legal Support/Chief Counsel, DOE, 9800 South Cass Avenue, Argonne, Illinois, 60439, is hereby designated to represent the CO in administering the Intellectual Property Clauses in this contract. Correspondence concerning patent and technical data issues shall be addressed to the Chicago Operations Office with a copy to the Environmental Management Consolidated Business Center (EMCBC) Office of Legal Services, the CO and the COR.
- (c) Non-technical Administrative Correspondence. All correspondence, other than technical correspondence, shall be addressed to the CO, with information copies of the correspondence to the COR.
- (d) Subject Line(s). All correspondence shall contain a subject line commencing with the contract number as illustrated below:  
  

**“SUBJECT: CONTRACT NO. DE-AC30-11CC40015”**  
**(Insert subject topic after contract number, e.g., “Request for Subcontract Consent”).**
- (e) Electronic Media for Reports/Plans/Documents. All required reports, plans, and other documents will continue to be submitted to DOE in hard copy, but shall also be available electronically upon request by the CO or the COR. The Contractor will prepare the requested reports and documents via site standard software and provide a copy on diskette or Compact Disk (CD-R, CD-RW) as required by the size of the document. The data shall be in a format that will allow conversion to Portable Document Format (PDF) or Hyper Text Markup Language (HTML) for potential posting on the Internet, Intranet, or in an electronic library. If other software is used, the documents shall

be scanned and then provided on diskette or Compact Disk. Electronic data shall be available within five days of the DOE request.

## G.2 SUBMISSION OF VOUCHERS/INVOICES

- (a) VIPERS. The Contractor is required to submit payment invoices and supporting documentation electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS) which is accessible at <http://finweb.oro.doe.gov/>. Detailed instructions on how to enroll and use the system are provided on the web page.

The website provides the vendor the following system capability, required EFT banking form/information and instructions:

- (1) Logon to VIPERS
- (2) Request Access
- (3) Vendor Banking Data Form
- (4) Registration
- (5) Invoice Status
- (6) Electronic Invoicing

- (b) Cost Invoices. The Contractor shall submit invoices (Standard Form 1034 located at <http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF>) in accordance with the FAR payment clause in Section I of the contract. The Contractor may submit cost invoices, with supporting documentation, monthly. The Contractor is required to submit Project Performance Reports (PPR) on a monthly basis reconciled to the monthly invoice submitted for payment. The PPR period must match that of the invoice period and must be received by DOE at the same time as the submission of the monthly invoice.
- (c) Fee Invoices. The Contractor may submit invoices for semi-annual fee payments based on DOE's fiscal year calendar concurrent with the PPRs. Fee payment(s) will be made after the CO determines whether adjustments/reductions are necessary.
- (d) Any basis for invoice withholding, adjustment or reduction which is discovered after payment will be corrected on subsequent invoices. If the Government discovers such defects, the CO will notify the Contractor in writing. The CO's written notification will explain the nature of the basis for withholding, adjustment, or reduction, as well as specify the dollar amount of the withholding, adjustment or reduction.
- (e) Nothing in this provision shall affect the rights of either the Government or the Contractor under the Section I clause entitled FAR 52.232-25, "Prompt Payment," of this contract. The Government may notify and/or initiate withholding, adjustment, or reduction any time prior to final payment under this contract.

- (f) In addition to the electronic invoice submission required in G.2 (a), the Contractor shall submit one copy of the invoice(s), including all supporting documentation to the CO, COR, and DOE-PPPO Budget Analyst. The mailing address for the Budget Analyst is:

United States Department of Energy  
Portsmouth/Paducah Project Office  
ATTN: Shelley Haynie-Sparks, Budget Analyst  
1017 Majestic Drive, Suite 200  
Lexington, KY 40513-0066

### **G.3 DOE CONTRACTING OFFICER'S REPRESENTATIVE (COR)**

The Contracting Officer's Representative(s) will be designated by separate letter and will represent the CO in the technical phases of the work. A copy of this designation letter shall be furnished to the Contractor. The COR is not authorized to change any of the terms and conditions of this contract. Changes in Section C will be made only by the CO by properly written modification(s) to the contract. Additional COR's for other purposes as required may be designated in writing by the CO.

### **G.4 CONTRACT ADMINISTRATION**

- (a) The name and correspondence address of the Department of Energy (DOE) Contracting Officer (CO) is:

Pamela Thompson, Primary Contracting Officer  
David Senderling, Alternate Contracting Officer  
U.S. Department of Energy  
Portsmouth/Paducah Project Office  
1017 Majestic Drive, Suite 200  
Lexington, KY 40513

Written communication shall make reference to the contract number and shall be mailed to the Contract Specialist designated via separate correspondence to the above address.

- (b) The name and correspondence address of the DOE Contracting Officer's Representative (COR) is:

To be provided by Separate Letter  
U.S. Department of Energy  
Portsmouth/Paducah Project Office  
1017 Majestic Drive, Suite 200  
Lexington, KY 40513

Performance of the work under this contract shall be subject to the technical direction of DOE COR(s) in accordance with the Section H clause entitled, DEAR 952.242-70, Technical Direction. Any change in any DOE COR may be made administratively by letter from the CO consistent with Section H clause entitled, DEAR 952.242-70, Technical Direction.

- (c) The designated paying office for direct payment invoices under the contract is:

Direct Mail Address:

U.S. Department of Energy  
Oak Ridge Financial Services Center  
P.O. Box 4307  
Oak Ridge, TN 37831

Express Courier Address:

U.S. Department of Energy  
Oak Ridge Financial Services Center  
200 Administration Road  
Oak Ridge, TN 37831  
(865) 241-5073

**G.5 CONTRACTOR'S POINT OF CONTACT**

The Contractor shall identify to the PPPO CO the official who has the authority and is responsible for managing, administering, and negotiating changes to the terms and conditions of this contract, as well as executing contract modifications on behalf of the company.

**PART I – THE SCHEDULE**

**SECTION H**

**SPECIAL CONTRACT REQUIREMENTS**

**TABLE OF CONTENTS**

H.1	SALES OF CONVERSION PRODUCTS AND EXCESS URANIUM INVENTORY ....	H-5
H.2	MODIFICATION AUTHORITY .....	H-9
H.3	INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR .....	H-9
H.4	FAR 52.234-4 EARNED VALUE MANAGEMENT SYSTEM (JUL 2006).....	H-9
H.5	DOE CONTRACT ADMINISTRATION AND OVERSIGHT .....	H-10
H.6	WORK STOPPAGE AND SHUT DOWN AUTHORIZATION.....	H-11
H.7	DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000).....	H-12
H.8	KEY PERSONNEL .....	H-14
H.9	NO THIRD PARTY BENEFICIARIES–PORTSMOUTH, OH AND PADUCAH, KY .....	H-16
H.10	DEFINITIONS – PORTSMOUTH, OH.....	H-16
H.11	WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES – PORTSMOUTH, OH.....	H-17
H.12	EMPLOYEE COMPENSATION: PAY AND BENEFITS – PORTSMOUTH, OH.....	H-22
H.13	SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS – PORTSMOUTH, OH ....	H-28
H.14	WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES – PORTSMOUTH, OH.....	H-30
H.15	POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS – PORTSMOUTH, OH.....	H-36
H.16	LABOR RELATIONS – PORTSMOUTH, OH.....	H-37

H.17	WORKFORCE RESTRUCTURING - PORTSMOUTH, OH .....	H-38
H.18	DEFINITIONS – PADUCAH, KY.....	H-38
H.19	WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES – PADUCAH, KY .....	H-40
H.20	EMPLOYEE COMPENSATION: PAY AND BENEFITS – PADUCAH, KY .....	H-44
H.21	SPECIAL PROVISIONS APPLICABLE TO WORFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITSS – PADUCAH, KY .....	H-50
H.22	WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES – PADUCAH, KY.....	H-53
H.23	POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS – PADUCAH, KY.....	H-58
H.24	LABOR RELATIONS – PADUCAH, KY.....	H-60
H.25	WORKFORCE RESTRUCTURING –PADUCAH, KY .....	H-61
H.26	SOFTWARE MADE AVAILABLE FOR CONTRACTOR’S USE .....	H-61
H.27	GOVERNMENT-FURNISHED SERVICES AND ITEMS .....	H-61
H.28	PROJECT CONTROL SYSTEMS AND REQUIREMENTS .....	H-64
H.29	INFORMATION.....	H-69
H.30	PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS.....	H-71
H.31	CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES .....	H-72
H.32	NUCLEAR FACILITY OPERATIONS.....	H-73
H.33	COMPLIANCE WITH ORDERS, AGREEMENTS, AND REGULATORY AUTHORITIES .....	H-73
H.34	ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES.....	H-73
H.35	PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE.....	H-74

H.36 ALTERNATIVE DISPUTE RESOLUTION (ADR) .....	H-74
H.37 DEFENSE NUCLEAR FACILITIES SAFETY BOARD .....	H-75
H.38 HAZARDOUS MATERIALS .....	H-75
H.39 PRIVATELY GENERATED RESTRICTED DATA .....	H-75
H.40 SITE SERVICES .....	H-75
H.41 EMPLOYEE CONCERNS PROGRAM .....	H-76
H.42 STANDARD INSURANCE REQUIREMENTS .....	H-76
H.43 DEPARTMENT OF LABOR WAGE DETERMINATION .....	H-77
H.44 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2006) .....	H-77
H.45 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS.....	H-77
H.46 MENTOR-PROTÉGÉ PROGRAM.....	H-77
H.47 SUBCONTRACTOR FLOWDOWN REQUIREMENTS .....	H-78
H.48 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY.....	H-78
H.49 COOPERATION WITH OTHER SITE CONTRACTORS.....	H-79
H.50 PERFORMANCE GUARANTEE AGREEMENT .....	H-80
H.51 RESPONSIBLE CORPORATE OFFICIAL .....	H-80
H.52 ASSIGNMENT OF EXISTING AGREEMENTS AND SUBCONTRACTS .....	H-80
H.53 PAPERLESS DIRECTIVE PROCESSING SYSTEM.....	H-81
H.54 TRANSITION TO FOLLOW-ON CONTRACT .....	H-83
H.55 PRIVACY ACT SYSTEM OF RECORDS.....	H-83

H.56 ADDITION AND ALTERATIONS TO IMPLEMENT EXECUTIVE ORDER 13423,  
STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND  
TRANSPORTATION MANAGEMENT AND ITS IMPLEMENTING  
INSTRUCTIONS..... H-84

H.57 GOVERNMENT OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES  
FOR CONTRACT TRANSITION PERIOD..... H-84

H.58 CONTRACTOR’S ORGANIZATION..... H-85

H.60 SMALL BUSINESS SUBCONTRACTING PLAN ..... H-86

H.61 PARTNERING ..... H-86

H.62 PERFORMANCE EVALUATION AND MEASUREMENT PLAN..... H-87

H.63 PERFORMANCE REQUIREMENT ..... H-88

## SECTION H

### SPECIAL CONTRACT REQUIREMENTS

#### H.1 SALES OF CONVERSION PRODUCTS AND EXCESS URANIUM INVENTORY

(a) Definitions:

- (1) "Product" means any saleable material resulting from the DUF6 conversion process, including AqHF, CaF<sub>2</sub> and uranium oxides.
- (2) "DUF6 Contractor's development and implementation costs," as used in this clause, means those costs incurred by the DUF6 Contractor in developing, testing, preparing, and submitting the proposal, as well as those costs incurred by the DUF6 Contractor to make the contractual changes required for approval by the Contracting Officer.
- (3) "DUF6 Contractor's proposal," as used in this clause, means the proposal the DUF6 Contractor prepares and submits for approval by the Contracting Officer in accordance with this clause.
- (4) "Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the DUF6 Contractor's proposal, such as any net increases in the costs of testing, operations, maintenance, safety reviews, oversight, and logistics support. The term does not include the normal administrative costs of processing the DUF6 Contractor's proposal or any increase in this contract's cost or price resulting from negative contract savings (see below).
- (5) "Net acquisition savings" means total acquisition savings under this contract including the product proceeds received, if any, less (1) the allowable costs associated with the sale that would not otherwise have been incurred during the performance of this contract except to generate the product proceeds, and (2) Government costs.
- (6) "Negative contract savings," as used in this clause, means allowable costs associated with acceptance of the DUF6 Contractor's proposal that exceed the product proceeds.
- (7) "Product proceeds" means the gross revenue obtained by the DUF6 Contractor from the sale of DUF6 or DUF6 conversion products under this contract.

(b) Sales:

- (1) The DUF6 Contractor shall be responsible for the sale of any product as a sales agent for the Government. Title to any product shall remain with the Government until the product is sold. The DUF6 Contractor shall, upon such terms and conditions as the Contracting Officer may approve, sell such property at a price (including “no-cost” sales) agreed upon by the Contracting Officer and the DUF6 Contractor as the fair value thereof.
  - (2) The Contractor shall provide assistance to DOE, as directed and authorized specifically by the Contracting Officer, to support or conduct sales of UF6 inventory consistent with the Secretarial Policy and DOE Excess Uranium Inventory Management Plan. This shall include moving cylinders, sampling, characterizing, transporting, and other handling activities in support of any uranium sales, independent of who conducts the sale on DOE's behalf.
  - (3) The Contractor will take no action to market or sell any products or inventory items until specifically directed by the Contracting Officer. The Contractor shall not prepare and the DOE will not review any Contractor's Proposal for sale of product or inventory until allowed by Contracting Officer direction.
  - (4) If and only if allowed by law, sale proceeds may be applied to reduce allowable costs under this contract as directed by the Contracting Officer. The Contracting Officer will direct the disposition of product proceeds, to be returned to the U.S. Treasury or to be applied to reduce allowable costs under the contract.
- (c) DUF6 Contractor's Proposal: When directed by the Contracting Officer, the DUF6 Contractor shall prepare a proposal for sale of UF6 inventory or any product and submit it to the Contracting Officer for review and approval. The DUF6 Contractor's proposal should include, at a minimum, the following:
- (1) Description of the product or inventory items.
  - (2) Description of the projected quantities to be sold.
  - (3) Identification of the benefits and disadvantages to DOE of the proposed sale including, but not limited to, financial, technical, environmental, safety, and health.
  - (4) Identification and description of any impact or change to the current or projected conduct of operations.
  - (5) Detailed cost impact to current or projected operations including cost reduction and/or cost increases to the current or projected method of operations and any costs to be incurred in order to conduct sales.
  - (6) Projected sales proceeds.

- (7) Estimated net acquisition savings.
  - (8) Estimated negative contract savings, if any.
  - (9) Description of how the DUF6 Contractor's accounting system will track the costs and sales proceeds associated with the proposed sale.
  - (10) Identification of increased or decreased funding by fiscal year needed to implement the DUF6 Contractor's proposal, including funds for operations and capital improvements.
  - (11) Description and estimate of Government costs.
  - (12) Any projected impact to the environment and safety or health of project employees, site workers, and general public.
  - (13) Identification of any changes to the contract requirements, terms or conditions necessary to implement the DUF6 Contractor's proposal.
  - (14) Identification of any permits and/or licenses required.
  - (15) A statement of the time by which a contract modification accepting the DUF6 Contractor's proposal must be issued in order to achieve the maximum cost reduction or sales proceeds, noting any effect on the contract completion time or delivery schedule.
  - (16) Identification of incurred and estimated DUF6 Contractor's development implementation costs.
  - (17) Identification of the projected customers and their proposed use(s) of proposed sales products or inventory.
- (d) Government Action:
- (1) The Contracting Officer will notify the DUF6 Contractor of the status of the DUF6 Contractor's proposal within thirty calendar days after receipt by the Contracting Officer. If additional time is required, the Contracting Officer will notify the DUF6 Contractor within the thirty day period and provide the reason for the delay and the expected date of the decision. The Government will not be liable for any delay in approving or rejecting the DUF6 Contractor's proposal.
  - (2) The DOE decision may include direction to the Contractor for disposition of any product proceeds from the sale.

- (3) The decision to approve or reject all or any part of the DUF6 Contractor's proposal is a unilateral decision made solely at the discretion of the Contracting Officer.
- (e) DUF6 Contractor's Development and Implementation Costs
- (1) The DUF6 Contractor will account for all the development and implementation costs under this clause separately from all other contract costs. The DUF6 Contractor's development and implementation costs will be unallowable contract costs unless the Contracting Officer specifically approves them in advance or as part of the approval in paragraph (d) above.
  - (2) Approved development and implementation costs shall be included in the calculation of net acquisition savings.
- (f) Data Rights: If a DUF6 Contractor's proposal is approved, the DUF6 Contractor hereby grants the Government unlimited rights in the DUF6 Contractor's proposal and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the DUF6 Contractor's proposal and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)
- (g) Accounting System:
- (1) The DUF6 Contractor's accounting system shall account for all net acquisition savings including product proceeds. Each proposed and approved DUF6 Contractor proposal for the sale of product or inventory item shall be accounted for separately unless otherwise agreed to by the Contracting Officer. By submitting a proposal under this clause, the DUF6 Contractor grants the Contracting Officer or an authorized representative the right to examine DUF6 Contractor records including books, documents, and other types of factual information including cost and pricing data that will permit an adequate evaluation of claimed net acquisition savings.
  - (2) If the cost of maintaining detailed accounting records is not warranted by the savings to be realized, the Contracting Officer and the DUF6 Contractor may agree on alternative means by which savings can be measured.
- (h) The Government reserves the right to use or otherwise dispose of any or all DUF6 and products, including disposition to third parties. In particular, the Government retains the right to encourage and promote (including compensation) third party use of DUF6 or any resultant products of the conversion process.

## **H.2 MODIFICATION AUTHORITY**

Notwithstanding any of the other clauses of this contract, the CO shall be the only individual authorized to:

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

## **H.3 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR**

The representations, certifications, and other statements of offeror, completed by the Contractor, are hereby incorporated by reference.

## **H.4 FAR 52.234-4 EARNED VALUE MANAGEMENT SYSTEM (JUL 2006)**

- (a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard - 748 (current version at the time of award) to manage this Contract. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this Contract.
- (b) If, at the time of award, the Contractor's EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award), the Contractor shall—
  - (1) Apply the current system to the Contract; and
  - (2) Take necessary actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.
- (c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after Contract award.
- (d) The Contracting Officer may require an IBR at—
  - (1) Exercise of significant options; or
  - (2) Incorporation of major modifications.

- (e) Unless a waiver is granted by the CFA, Contractor proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.
- (f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.
- (g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause:
  - Spectra Tech, Inc.**
  - Diversified Management Consultants LLC**
  - Wastren Advantage, Inc.**
  - Prolific Technology Consulting Group, LLC**
  - E2 Consulting Engineers, Inc. of Colorado**

## **H.5 DOE CONTRACT ADMINISTRATION AND OVERSIGHT**

- (a) The conversion facilities at the Portsmouth Gaseous Diffusion Plant and Paducah Gaseous Diffusion Plant present significant work scope challenges to the Contractor, and make it imperative that the DOE has a focused approach for providing oversight of the contractor work. This approach will provide effective DOE oversight of project work. The oversight approach will include reviews of submitted plans and periodic progress reports submitted by the Contractor and direct observation by DOE employees or their designated representatives of contractor work in progress.
- (b) DOE oversight activities will focus primarily on ensuring safe operation and management of the conversion facilities. The Contractor shall respond to DOE oversight and to concerns, findings, and observations as identified by the CO or Contracting Officer's Representative (COR) during the conduct of these oversight activities. The areas of oversight are:
  - (1) **Project Management Oversight**: This includes field inspections and the monthly assessment of project status, which will be used to determine and validate project performance.
  - (2) **Contract Management Oversight**: Administration and monitoring of the contract will be in accordance with the contract terms and conditions, which include, but are not limited to, the oversight required under FAR Subpart G – Contract Management (FAR Parts 42-51) and its supplements.

- (3) Financial Management Oversight: DOE will review budgetary data submitted by the Contractor to be provided into the Integrated Accountability, and Budgeting System (IPABS). DOE or its representative will monitor and audit contractor funds, management practices, and procedures to ensure compliance with applicable regulations and statutes.
- (4) Regular Oversight: The COR, Safety System Oversight personnel, Facility Representatives, and/or Subject Matter Experts will conduct regular oversight and assessments. The purpose of these reviews will be to assess performance. In addition, to the daily involvement, the Contractor shall support:
  - (i) Ongoing management walkthroughs conducted in areas of the project or locations where work is ongoing, if there is no danger to personnel or it does not require a shutdown of operations;
  - (ii) Periodic walkthroughs by the regulators or DOE Headquarters personnel, if there is no danger to personnel or it does not require a shutdown of operations and;
  - (iii) DOE participation in Contractor briefings, meetings, reviews, tests, and other contract-related activities; and,
  - (iv) Contractor employee safety concerns elevated to DOE for evaluation per DOE Order 442.1A process.

## H.6 WORK STOPPAGE AND SHUT DOWN AUTHORIZATION

- (a) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the Facility Safety Envelope is a condition, situation, or proposed activity which if not terminated could cause, prevent mitigation of, or seriously increase the risk of (1) radiation exposure, (2) toxic hazardous chemical exposure, (3) electrical/steam hazards, (4) fire/explosion and/or (5) personal injury or death.
- (b) Stop-Work: In the event of an imminent health and safety hazard, identified by conversion facility line management or operators or conversion facility health and safety personnel overseeing conversion facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (e.g., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect DOE facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate contractor official, who will direct the shutdown or other actions, as required. Such

- mitigating action should subsequently be coordinated with the DOE and contractor management. The suspension or stop-work will be promptly confirmed in writing from the CO.
- (c) Contractor and DOE employees have the right to recommend a facility shutdown, regardless of who is performing the activity, if continuation of that activity would be considered an imminent danger in relation to the Facility Safety Envelope.
  - (d) Shutdown: In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by conversion facility line management or operators, conversion facility health and safety personnel over-viewing conversion facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with contractor management, and the COR. Any written direction to suspend operations shall be issued by the CO, pursuant to the Section F.1, clause entitled FAR 52.242-15 STOP WORK ORDER (AUG 1989) Alternate I (APR 1984).
  - (e) Facility Representatives: DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to “stop work,” which may apply to the suspension of operations of an entire plant, activity, or job. This stop-work authority is limited to an operation of a facility which is performing work the FR believes:
    - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
    - (2) Could adversely affect the safe operation of, or could cause serious damage to, the facility if allowed to continue; or
    - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
  - (f) The CO may at any time during the performance of this contract issue an order stopping work in whole or in part due to environmental, safety, and health reasons.
  - (g) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute “contractor representatives” for “the CO” in all subcontracts.

#### **H.7 DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)**

- (a) Performance of the work under this Contract shall be subject to the technical direction of the DOE Contracting Officer’s Representative (COR). The term “technical direction” is defined to include, without limitation:

- (1) Providing direction to the Contractor that redirects Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
  - (3) Reviewing and, where required by the Contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.
- (b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.
- (c) Technical direction must be within the scope of work stated in the Contract. The COR does not have the authority to, and may not, issue any technical direction that:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the Contract clause entitled "Changes;"
  - (3) In any manner causes an increase or decrease in the total estimated Contract cost, the fee (if any), or the time required for Contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the Contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the Contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the Contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must:

- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the Contract effort and does not constitute a change under the Changes clause of the Contract;
  - (2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or
  - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the Contract or to agree upon the Contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes"

## **H.8 KEY PERSONNEL**

- (a) The personnel specified below are considered to be essential to the work being performed hereunder. Prior to removing, replacing or diverting any of the specified individuals to other programs, the Contractor must notify the CO reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program and to obtain the CO's written approval.
- (b) The CO is to be notified reasonably in advance of diverting or substituting for any of these individuals. Notice shall be given not less than 60 days before diversion or substitution. No change shall be made by the Contractor without the written consent of the CO.
- (c) Unless approved in writing by the CO, no Key Personnel position will remain unfilled by a permanent replacement for more than 30 days. Whenever, for any reason, one or more of the employees listed in paragraph (e) below is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the CO, replace such employee with an employee of substantially equal abilities and qualifications as compared to the incumbent employee, giving serious consideration to the benefits derived from utilizing the talents and capabilities of a diverse workforce. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.
- (d) The Contractor organizational structure shall have a Project Manager, a Project Business/Controls Manager, and Portsmouth and Paducah Plant Managers. The organizational structure shall identify any additional Key Personnel deemed essential to the work being performed.

- (e) Anytime any member of Key Personnel is replaced or removed for any reason under the Contractor’s control within two years of contract award, or within two years of being placed in the position, whichever is later, the Contractor shall forfeit \$750,000 in fee if said Key Personnel is the Contractor’s Project Manager and \$350,000 in fee for each occurrence with all other Key Personnel. Likewise, if within two years of contract award, or within two years of being placed in the position, whichever is later, any Key Personnel voluntarily resigns, the Contractor shall forfeit \$750,000 in fee if said Key Personnel is the Contractor’s Project Manager and \$350,000 in fee for each occurrence with all other Key Personnel. The Contractor may request, in writing, that the CO waive all or part of these reductions in fee, if special circumstances exist. The CO shall have unilateral discretion to waive or not to waive all or part of a fee reduction.

**DESIGNATED KEY PERSONNEL**

NAME	TITLE
<u><b>George E. Dials</b></u>	Project Manager
<u><b>Darold G. Haug</b></u>	Project Business/Controls Manager
<u><b>Charles Kenneth Collier</b></u>	Plant Manager- Portsmouth
<u><b>Thomas C. Robinson, Jr.</b></u>	Plant Manager- Paducah
<u><b>Charles E. Armitage</b></u>	Chief Engineer
<u><b>Michelle M. Reichert</b></u>	ES&H Manager
<u><b>Joseph M. Roberts</b></u>	Quality Assurance Manager
<u><b>David B. Amerine</b></u>	Commissioning Manager

- (f) Key Personnel positions are subject to DOE acceptance and approval.
- (g) The Contractor shall immediately notify the CO if the Contractor deems immediate removal or suspension of any member of Key Personnel is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause in Section H.58 entitled “Contractor’s Organization”. The Contractor may remove or suspend such person at once, although the Contractor must notify the CO prior to or concurrently with such action.
- (h) The Contractor shall provide written commitment from each Key Personnel agreeing to the terms and conditions of this clause.

## **H.9 NO THIRD PARTY BENEFICIARIES–PORTSMOUTH, OH AND PADUCAH, KY**

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

## **H.10 DEFINITIONS – PORTSMOUTH, OH**

For purposes of Clause H.11, Workforce Transition and Employee Hiring Preferences – Portsmouth, OH; Clause H. 12, Employee Compensation: Pay and Benefits – Portsmouth, OH; Clause H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH; Clause H.14, Workforce Transition and Benefits Transition: Plans and Timeframes – Portsmouth, OH; H.15, Post-Contract Responsibilities For Pension and Other Benefit Plans – Portsmouth, OH; and H.16, Labor Relations – Portsmouth, OH, the following definitions are applicable (unless otherwise specified):

- (A) “Workforce Transition Period” means the six month period following the date of the Contract Notice to Proceed issued pursuant to Section F.2(a) of this Contract.
- (B) “Grandfathered Employees” means employees who are defined as Grandfathered Employees under the pension plan sponsored by the Uranium Disposition Services, LLC (UDS) (Uranium Disposition Services, LLC Pension Plan for Grandfathered Employees, (hereinafter “UDS Pension Plan”) in accordance with the terms of the UDS Pension Plan and applicable law.
- (C) “UDS Incumbent Contractor” means Uranium Disposition Services, LLC (UDS, LLC) and its first and second tier subcontractors at the Portsmouth Gaseous Diffusion Plant Site and/or at the UDS Office located in Lexington, Kentucky (Lexington Office) under Contract DOE DE-AC-05-02OR22717.
- (D) “UDS Incumbent Employees means employees (1) who hold regular appointments or who are regular employees on the rolls of UDS, LLC and Grandfathered Employees on the rolls of UDS, LLC’s first and second tier subcontractors; and (2) who are employed at the Portsmouth Gaseous Diffusion Plant Site and/or at the Lexington Office.
- (E) “USEC” means the United States Enrichment Corporation.
- (F) “USEC Employees” means employees who hold regular appointments or who are regular employees on the rolls of USEC at either the Portsmouth or Paducah Gaseous Diffusion Plant Site. The applicable site will be identified in the relevant paragraphs and/or clause(s). If employment at a specific site is not identified, the clause(s) or

- paragraphs are applicable to USEC Employees employed at both Gaseous Diffusion Plant Sites.
- (G) “Non-Grandfathered Employees” means employees who are not defined as Grandfathered Employees under the UDS Pension Plan in accordance with the terms of the UDS Pension Plan and applicable law.
- (H) “TPMC” means Theta Pro2Serve Management Company, LLC (TPMC, LLC) and its first and second tier subcontractors under DOE Contract DE-AC24-05OH20193.
- (I) “TPMC Employees” means employees (1) who hold regular appointments or who are regular employees on the rolls of TPMC, LLC and Grandfathered Employees on the rolls of TPMC, LLC’s first and second tier subcontractors; and (2) who are employed at the Portsmouth Gaseous Diffusion Plant Site under DOE Contract DE-AC24-05OH20193 during the Workforce Transition Period.
- (J) “LPP” means LATA/Parallax Portsmouth, LLC (LPP, LLC) and its first and second tier subcontractors under DOE Contract DE-AC24-05OH20192.
- (K) “LPP Employees” means employees (1) who hold regular appointments or who are regular employees on the rolls of LPP, LLC and Grandfathered Employees on the rolls of LPP, LLC’s first and second tier subcontractors; and (2) who are employed at the Portsmouth Gaseous Diffusion Plant Site under DOE Contract DE-AC24-05OH20192 during the Workforce Transition Period.”
- (L) “Portsmouth Contractors” means the UDS Incumbent Contractor, LPP, TPMC, and USEC.

#### **H.11 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES – PORTSMOUTH, OH**

- (A) Hiring Preferences. Employees will receive a right of first refusal and /or other preference in hiring for vacancies for non-managerial positions (i.e. all those below the first line of supervision) in non-construction activities in Section C, Statement of Work (SOW), in accordance with this clause, any applicable collective-bargaining agreement(s), and site seniority, as set forth below.
- (1) During the Workforce Transition Period, the Contractor shall provide the right of first refusal and preferences in hiring in the following order of precedence:
- (a) The Contractor shall give a right of first refusal for vacancies in non-managerial positions under this Contract to individuals (1) who are UDS Incumbent Employees, USEC Employees who have been identified by their employer as being at risk of being involuntarily separated, LPP Employees who have been identified by their employer as being at risk of being involuntarily separated, and TPMC Employees who have been identified by their employer as being at risk

of being involuntarily separated; (2) who are employed at the Portsmouth Gaseous Diffusion Plant Site; and (3) who hold positions or perform functions during the Workforce Transition Period that are substantially equivalent to the vacancies in such non-managerial positions under this Contract and also to individuals who held positions or performed functions during the six months preceding the first day of the Workforce Transition Period that are substantially equivalent to the vacancies in such non-managerial positions under this Contract.

- (b) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are UDS Incumbent Employees, USEC Employees who have been identified by their employer as being at risk of being involuntarily separated, LPP Employees who have been identified by their employer as being at risk of being involuntarily separated, and TPMC Employees who have been identified by their employer as being at risk of being involuntarily separated; (2) who are employed at the Portsmouth Gaseous Diffusion Plant Site; and (3) who meet the qualifications for a particular position.
- (c) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are UDS Incumbent Employees, USEC Employees who have been identified by their employer as being at risk of being involuntarily separated, LPP Employees who have been identified by their employer as being at risk of being involuntarily separated, and TPMC Employees who have been identified by their employer as being at risk of being involuntarily separated; (2) who are employed at the Portsmouth Gaseous Diffusion Plant Site; and (3) who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.13(A).
- (d) Subsequent to the application of the right of first refusal in Paragraph (A)(1)(a) and the preferences in hiring in Paragraphs (A)(1)(b) and (c) above, the Contractor shall give a preference in hiring for vacancies pursuant to Paragraph (A)(3) below.

- (2) After the Workforce Transition Period and continuing throughout the remaining period of performance under this Contract, the right of first refusal and/or other preferences in hiring shall be provided in the following order of precedence:

- (a) The Contractor shall give a right of first refusal in hiring for vacancies in non-managerial positions under this Contract to USEC Employees (1) who are employed at the Portsmouth Gaseous Diffusion Plant Site; (2) who have been identified by their employer as being at risk of being involuntarily separated; and (3) who hold or have held positions or perform or have performed functions which are substantially equivalent to vacancies in such non-managerial positions or functions under this Contract.
  
- (b) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract, to USEC Employees (1) who are employed at the Portsmouth Gaseous Diffusion Plant Site; and (2) who have been identified by their employer as being at risk of being involuntarily separated, in the following order of precedence:
  - (i) USEC Employees who meet the qualifications for a particular position.
  
  - (ii) USEC Employees who may not meet the qualifications for a particular position but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.13(A).
  
- (c) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to TPMC Employees and LPP Employees (1) who are employed at the Portsmouth Gaseous Diffusion Plant Site at the time of the vacancies; and (2) who have been identified by their employer as being at risk for involuntary separation, in the following order of precedence:
  - (i) LPP Employees and TPMC Employees who hold positions or perform functions at the time the vacancy arises that are substantially equivalent to the vacancies in such non-managerial positions under this Contract.
  
  - (ii) LPP Employees and TPMC Employees who meet the qualifications for particular positions.
  
  - (iii) LPP Employees and TPMC Employees who may not meet the qualifications for a particular position but who agree to become qualified and can become qualified by the commencement of active employment under this Contract for the particular positions with the training provided pursuant to Clause H.13(A).

For purposes of this paragraph (2)(c), the phrase “during the Workforce Transition Period” contained in Clause H.10(I)(2) and (K)(2), is not applicable. The respective employees are to be employed at the Portsmouth Gaseous Diffusion Plant Site at the time of the vacancy.

- (d) Subsequent to the application of the right of first refusal in Paragraph (A)(2)(a) and the preferences in hiring in Paragraphs (A)(2)(b) and (c) above, the Contractor shall give a preference in hiring for vacancies in the order of precedence as set forth in Paragraph (A)(3) below.
- (3) During the entire period of performance under this Contract, but subordinate to the preferences set out in Paragraphs (A)(1)(a) – (c) and (A)(2)(a) – (c) above, the Contractor shall provide preferences in hiring in the following order of precedence:
- (a) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to USEC Employees employed at the Portsmouth Gaseous Diffusion Plant Site (1) who have been identified by their employer as being at risk of being involuntarily separated from employment by a plant closing or mass layoff (as such terms are defined in Section 2101(a)(2) and (3) of Title 29 of the United States Code) at the Portsmouth Gaseous Diffusion Plant Site; and (2) who are qualified and/or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.13(A).
  - (b) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are former employees of USEC, former employees of the UDS Incumbent Contractor, and former employees of the UDS Incumbent Contractor’s first and second-tier subcontractors; and (2) who are entitled to recall rights consistent with any applicable site seniority and any applicable collective bargaining agreement(s) at the Portsmouth Gaseous Diffusion Plant Site.
  - (c) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are Grandfathered Employees and who are former employees of the UDS Incumbent Contractor, LPP, TPMC, and USEC at the Portsmouth Gaseous Diffusion Plant Site; (2) who have been involuntarily separated (other than for cause) from employment; and (3) who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” and with the provisions of any applicable Work Force

Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees.

- (d) The Contractor shall give a preference in hiring for non-managerial positions under this Contract to individuals (1) who are former employees of the UDS Incumbent Contractor, LPP, TPMC, and USEC; and any other DOE contractor at the Portsmouth Gaseous Diffusion Plant Site; (2) who were involuntarily separated (other than for cause) from employment; and (3) who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” and with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees.
- (e) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who were formerly employed by any other DOE contractor at a DOE defense nuclear facility; and (2) who are eligible for the hiring preference contained in the clause entitled “DEAR 952.226-74, Displaced Employee Hiring Preference” as provided in that clause and with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees.
- (f) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who were formerly employed at the Portsmouth Gaseous Diffusion Plant Site by the UDS Incumbent Contractor, LPP, TPMC, and USEC; (2) who were involuntarily separated (other than for cause) from their employment at the Portsmouth Gaseous Diffusion Plant Site; and (3) who are qualified for the position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.
- (g) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who have separated from employment at the Portsmouth Gaseous Diffusion Plant Site; (2) who are not barred from seeking employment at the Portsmouth Gaseous Diffusion Plant Site by the terms of employee waivers or releases of claims they executed; and (3) who are qualified for a particular position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.

(4) Clauses H.11(A)(1), (2), and (3) do not prohibit the Contractor from selecting the Contractor's existing employees at the Portsmouth Gaseous Diffusion Plant Site for positions or functions under this Contract.

(B) Costs. Any costs incurred by the Contractor as a result of the Contractor's failure to comply with the hiring preferences as set forth in this Contract will be unallowable, unless such costs were incurred as the result of the Contracting Officer's direction.

## **H.12 EMPLOYEE COMPENSATION: PAY AND BENEFITS – PORTSMOUTH, OH**

### **(A) Contractor Employee Compensation Plan**

The Contractor shall submit by the end of the 90 day Mobilization and Transition Phase identified in Section F.2(b)(1), a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

### **(B) Total Compensation System**

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" (Total Compensation System). DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan approved by the Contracting Officer.

### **(C) Appraisals of Contractor Performance**

DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.

### **(D) Reports and Information**

The Contractor shall provide the Contracting Officer the following reports and information with respect to pay and benefits provided under this Contract:

(1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special

adjustments, and structure movements for each pay structure showing actual against approved amounts.

- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
- (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in Paragraphs (F)(3)(a) and (b) below.

(E) Pay and Benefits Programs

The Contractor shall establish pay and benefit programs for employees in accordance with applicable law, the terms and conditions of this Contract, including Clause H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH, applicable collective bargaining agreement(s), and the following requirements as set forth below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Pay

- (a) For at least the first year of the term of the Contract or the first year after issuance of the Contract Notice to Proceed, whichever is longer, the Contractor shall provide equivalent pay to the following employees hired by the Contractor as compared to pay provided to those employees by the UDS Incumbent Employees, LPP, TPMC, and/or USEC:
  - (i) UDS Incumbent Employees hired by the Contractor;
  - (ii) USEC Employees hired by the Contractor for positions or to perform functions for the Contractor that are substantially equivalent to the positions held or functions they performed for USEC at the Portsmouth Gaseous Diffusion Plant Site; and
  - (iii) LPP Employees and TPMC Employees hired by the Contractor for positions or to perform functions for the Contractor that are substantially equivalent to the positions held or functions they

performed for their respective employers, LPP or TPMC at the Portsmouth Gaseous Diffusion Plant Site.

(b) All other employees hired by the Contractor shall receive pay which is competitive with the industry from which the Contractor recruits its employees, and in accordance with the terms and conditions of this Contract, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act, as applicable.

(2) Pension and Other Benefits. The Contractor shall provide a total package of benefits to UDS Incumbent Employees, USEC Employees, LPP Employees, and TPMC Employees, and all other employees who are hired by the Contractor in accordance with the terms and conditions of this Contract, any applicable collective bargaining agreement(s), and applicable law.

(3) Cash Compensation

(a) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

(i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Total Compensation System.

(ii) Any proposed major compensation program design changes prior to implementation.

(iii) An Annual Compensation Increase Plan (CIP).

(iv) Individual compensation actions for Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.

(v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).

(b) The Contracting Officer's approval of individual compensation actions will be required only for key personnel as identified in Clause H.8, Key Personnel of this Contract, and all other named key personnel, management and senior personnel as identified by the Contracting Officer.

(c) Severance Pay is not reimbursable under this Contract for an employee who:

- (i) Voluntarily separates, resigns or retires from employment,
  - (ii) Is offered comparable employment with a successor/replacement contractor,
  - (iii) Is offered comparable employment with a parent or affiliated company, or
  - (iv) Is discharged for cause.
- (d) Service credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(F) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (2) Cost reimbursement for pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (a) and (b) below. The studies shall be used by the Contractor as part of its performance self-assessment described in Paragraph (D)(4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
  - (a) An Employee Benefits Value Study (Ben-Val), every two years each for Grandfathered Employees and Non-Grandfathered Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Grandfathered Employees and Non-Grandfathered Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks

derived from nationally recognized and Contracting Officer approved survey sources; and

- (b) An Employee Benefits Cost Study Comparison, annually each for Grandfathered Employees and Non-Grandfathered Employees, that analyzes the Contractor's employee benefits cost for Grandfathered Employees and Non-Grandfathered Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.
- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
- (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
- (9) Cost reimbursement for Post Retirement Benefits (PRBs) is contingent on DOE approved service eligibility requirements for PRBs that shall be based on a minimum period of continuous employment service not less than five years under a DOE cost-reimbursement contract(s) immediately prior to retirement. Notwithstanding the previous sentence, the costs of PRBs will be reimbursed for individuals meeting the DOE-approved eligibility requirements of the applicable DOE-approved employee benefit plan. Unless required by Federal or state law, advance funding of PRBs is not allowable.

(G) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the Internal Revenue Code (IRC) and Employee Retirement Income Security Act (ERISA).
- (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable law.
- (3) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
- (4) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.
- (5) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year:
  - (a) Copies of IRS forms 5500 with schedules; and
  - (b) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (6) Prior to the adoption of any changes to a pension plan for which DOE reimburses costs, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Contractor Employee Compensation Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6:
  - (a) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and
  - (b) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued

liabilities of the pension plan, and on relative benefit value, if applicable.

- (7) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.

**H.13 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITS – PORTSMOUTH, OH**

- (A) Training. The Contractor will establish a training program specifically for the purpose of training individuals pursuant to Clauses H.11(A)(1)(c), H.11(A)(2)(b)(ii) and (c)(iii), and H.11(A)(3)(a). The one-time training program will be provided to individual employees and will not exceed six months in duration and \$5,000 in cost (subject to availability of funding) per person, in addition to wages and benefits.
- (B) Benefit Plans. The Contractor shall provide pension and other benefit plans, to Grandfathered Employees and Non-Grandfathered Employees hired by the Contractor and service credit for leave as set forth below:
- (1) Grandfathered Employees. Grandfathered Employees shall be provided pension and other benefits in accordance with applicable law, any applicable collective bargaining agreement(s), and the provisions of the UDS Pension Plan and other existing benefit plans for Grandfathered Employees. Within 90 days after issuance of the Contract Notice To Proceed, the Contractor shall become the sponsor of the UDS Pension Plan, and other existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post retirement benefit (PRB) plans, as applicable, for Grandfathered Employees and retired plan participants, with primary responsibility for management and administration of these plans. The Contractor shall also have primary responsibility for maintaining the qualified status of the plans. No employee who qualifies as a Grandfathered Employee under the UDS Pension Plan shall lose the right to participate in the UDS Pension Plan as a result of this transition.
  - (2) Non-Grandfathered Employees. Non-Grandfathered Employees shall receive a benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with this Contract, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act.
  - (3) Sponsorship Timing. Notwithstanding any other clause in this Contract, the Contractor shall ensure that it becomes the sponsor of the UDS Pension Plan and other existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post-retirement benefit

(PRB) plans, as applicable, for Grandfathered Employees no later than the date that the Contractor becomes the employer for Grandfathered Employees at both the Portsmouth and Paducah Gaseous Diffusion Plant Sites, and at the Lexington Office, so that that there is uninterrupted and continuous participation by Grandfathered Employees in the foregoing plan(s).

(4) Service Credit For Leave.

- (a) For UDS Incumbent Employees, LPP Employees, and TPMC Employees, who are hired by the Contractor pursuant to Clauses H.11(A)(1)(a), (b), and (c), and (A)(2)(c), the Contractor shall carry over the length of service credit for leave as well as leave balances accrued as of the date these employees are hired by the Contractor. Service credit for the represented workforce shall be applied consistently with any applicable collective bargaining agreement(s), and applicable law.
- (b) For USEC Employees hired by the Contractor, the Contractor shall carry over the length of service credit from USEC for purposes of determining rates of accruing leave for these employees as required by and consistent with any applicable collective bargaining agreement(s) and applicable law.

(5) Service Credit for Fringe Benefits Other Than Leave. Consistent with the terms of the applicable benefit plan(s), the Contractor shall credit all UDS Incumbent Employees, LPP Employees, and TPMC Employees hired by the Contractor under this Contract with their current length of service toward fringe benefits, which also includes retirement benefits and severance pay. Consistent with the terms of the plan(s), the transition of these employees during the first six months of this Contract from the UDS Incumbent Contractor, LPP, TPMC, and USEC to the Contractor shall not constitute a break in service under the plan(s). Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable collective bargaining agreement(s) and with applicable law. Service credit for purposes of severance pay is subject to Clause H.12(E)(3)(d).

(C) Annual Actuarial Evaluations. Because the Contractor has the responsibility for administering and maintaining the qualified status of all pension and other benefit plans that it sponsors under this Contract, the Contractor shall submit to the Contracting Officer annual actuarial evaluations for all applicable benefit plans as well as certify that the benefit plans are in full compliance with IRC and ERISA requirements. Such certification shall demonstrate that the benefit plans are qualified under the IRC. This evaluation shall include but not be limited to written reports relating to how the benefit plans pass IRC discrimination, participation and coverage testing requirements. Each detailed annual written actuarial evaluation shall identify any conditions that may adversely affect the qualification status of the plans within eighteen months or less of the date of the evaluation including but not limited to discrimination, participation and coverage testing requirements.

- (1) Meeting Test Requirements. The Contractor shall establish threshold factors that – based upon the experience of the UDS Pension Plan regarding the testing requirements – indicate when the UDS Pension Plan may not meet testing requirements within the next two plan years. Every six months, the Contractor shall identify when it may not meet testing requirements for the current plan year and the following plan year.
  - (2) Failure to Meet Test Requirements. In the case of the approved threshold factors described in Paragraph (C)(1) above and other factors as approved or requested by the Contracting Officer indicate that the Contractor may not meet testing requirements, the Contractor shall provide the Contracting Officer with a corrective action plan for addressing the potential or actual failure to meet testing requirements and quarterly updates on the status for testing purposes. After the corrective action plan has been submitted, and approved by the Contracting Officer, the Contractor shall provide quarterly updates on the status for testing purposes.
- (D) Changes to the UDS Pension Plan. In addition to any other provisions of this Contract, including but not limited to Clauses H.12(G)(6) and (7), any changes or amendments to the UDS Pension Plan are subject to Contracting Officer prior approval and shall be in accordance with applicable law, including compliance with any applicable collective bargaining agreement(s).

#### **H.14 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES – PORTSMOUTH, OH**

- (A) Workforce Transition Plan. The Contractor shall submit a written Workforce Transition Plan (WF Transition Plan) describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.11, Workforce Transition and Employee Hiring Preferences – Portsmouth, OH, Clause H.13(A), and this Paragraph (A). Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:
- (1) Within ten days after issuance of the Contract Notice to Proceed, the Contractor shall:
    - (a) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the Portsmouth Contractors to ensure compliance with Clauses H.11(A)(1) and (3) during the Mobilization and Transition Phase and during the second half of the Workforce Transition Period as defined in Clause H.10(A);
    - (b) Establish and submit to the Contracting Officer a written communication plan that details the communication that the Contractor

and its subcontractors will engage in with the Portsmouth Contractors regarding implementation of the hiring preference requirements set forth in Clauses H.11(A)(1) and (3);

- (c) Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified; and
  - (d) Obtain information from the Portsmouth Contractors identifying their employees that have initially been identified as being at risk of being involuntarily separated. Provide and define a process as part of the transition agreements required in paragraph (1)(a) above for obtaining updated and continuous information throughout the Workforce Transition Period regarding the identification of employees by the Portsmouth Contractors that have been identified as being at risk of being involuntarily separated.
- (2) Within 15 days after the issuance of the Contract Notice to Proceed, the Contractor shall:
- (a) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clauses H.11(A)(1) and (3); and
  - (b) Establish a written communication plan with the UDS Incumbent Employees, LPP Employees, TPMC Employees, and USEC Employees regarding the implementation of the hiring preferences in Clauses H.11(A)(1) and (3) and provide a copy to the Contracting Officer.
- (3) Within 30 days after issuance of the Contract Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final Plan (WT Transition Plan) and the draft transition agreements in H.14(A)(1)(a), it proposes to enter into consistent with requirements of Clauses H.11(A)(1) and (3) and Paragraphs (A)(1) and (2).
- (4) Within 60 days after issuance of the Contract Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in H.14(A)(1)(a).
- (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H.11, Workforce Transition and Employee Hiring Preferences – Portsmouth, OH, in accordance with the timeframes set forth

below. These reports shall include at a minimum the following information: employee hire dates or anticipated hire dates, employee salary levels, and the names of the former employers of the employees hired by the Contractor and/or hired by the Contractor's first and second tier subcontractors.

- (a) During the Mobilization and Transition Phase identified in Section F.2(b)(1), such reports shall be provided to the Contracting Officer on a weekly basis.
  - (b) During the remainder of the Workforce Transition Period, such reports shall be provided to the Contracting Officer on a biweekly basis.
  - (c) After the Workforce Transition Period as defined in Clause H.10(A), such reports shall be provided within the timeframes as requested by the Contracting Officer.
- (6) Within six months after the issuance of the Contract Notice to Proceed, the Contractor shall provide a written description of the process that it will utilize in obtaining information from USEC, LPP, and TPMC regarding their respective employees who have been identified as being at risk of being involuntarily separated in order to comply with Clauses H.11(A)(2) and (A)(3)(a). The Contractor shall provide copies of all and any written agreements into which it has entered with both USEC, LPP (when applicable), and TPMC (when applicable) for transitioning their respective employees pursuant to Clauses H.11(A)(2) and (A)(3)(a).
- (B) Benefits Transition. The Contractor shall submit a written draft Benefits Transition Plan within 20 days after issuance of the Contract Notice to Proceed describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.12, Employee Compensation: Pay and Benefits – Portsmouth, OH, Clause H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH, and this Paragraph (B). The Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer within 30 days after issuance of the Contract Notice to Proceed. All transitions of the UDS Pension Plan and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after issuance of the Contract Notice to Proceed.
- (1) The Contractor shall perform the following activities within the specified timeframes:
    - (a) Within ten days after issuance of the Contract Notice to Proceed, the Contractor shall:
      - (i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transition of the UDS

Pension Plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring assumption of the lead sponsorship of the UDS Pension Plan by the Contractor and contact information for the above personnel;

- (ii) Request the UDS Incumbent Contractor to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of the UDS Pension Plan and other existing benefits plans or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the Mobilization and Transition Phase identified in Section F.2(b)(1);
  - (iii) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.
- (b) Within 15 days after issuance of the Contract Notice to Proceed, the Contractor shall provide to the Contracting Officer a list of the information and documents that the Contractor has requested from UDS pertaining to the transition of the UDS Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from UDS. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the requirements in Clause H.11, Workforce Transition and Employee Hiring Preferences, Clause H.12, Employee Compensation: Pay and Benefits – Portsmouth, OH and Clause H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH.
- (c) Within 20 days after issuance of the Contract Notice to Proceed, the Contractor shall:
- (i) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.12 (E) and H.13(B), including requirements pertaining to the transition of employee benefit plans; and

- (ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the UDS Incumbent Contractor. The meeting shall include the Contractor's benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clauses H.12(E)(2) and H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH, including execution of transition agreements with the Portsmouth Contractors, as applicable. The minutes of the meeting, as well as a written description of any substantive issues identified at the meeting, shall be submitted to the Contracting Officer within two days after the meeting.
  
- (d) Within 30 days after issuance of the Contract Notice to Proceed and as part of the written Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.12, Employee Compensation: Pay and Benefits – Portsmouth, OH, and Clause H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH will be amended or restated on or before the last day of the Mobilization and Transition Phase. If an asset transfer(s) and/or the creation of a new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions including but not limited to how the Contractor proposes to comply with the Contract and applicable law and regulations governing such transactions.
  
- (e) Within 45 days after issuance of the Contract Notice to Proceed, the Contractor shall:
  - (i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract regarding employee compensation. The draft Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support, at a reasonable cost, the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

- (ii) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by the UDS Incumbent Contractor including but not limited to amendments effectuating the change in lead sponsorship and administration of the UDS Pension Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by the UDS Incumbent Contractor. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.
  - (iii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.
  - (iv) Provide draft copies of the transition agreements which the Contractor will enter into with the Portsmouth Contractors to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clauses H.12, Employee Compensation: Pay and Benefits – Portsmouth, OH and H.13 Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH. Copies of these executed transition agreements shall be provided to the Contracting Officer within two days of execution, but in no event later than the last day of the Mobilization and Transition Phase.
- (f) No later than 60 days after the issuance of the Contract Notice to Proceed and prior to the adoption of the documents identified in Paragraphs (B)(1)(e)(ii) and (iii) above, the Contractor shall submit the proposed final versions of these documents to the Contracting Officer for approval.
  - (g) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.
- (2) After the Workforce Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:
- (a) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable

amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract, and

- (b) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.12, Employee Compensation: Pay and Benefits – Portsmouth, OH and Clause H.13, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Portsmouth, OH.

#### **H.15 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS – PORTSMOUTH, OH**

- (A) If this Contract expires, terminates, and/or is terminated partially or completely and DOE has awarded a contract under which a new contractor becomes the sponsor and assumes responsibility for management and administration of the UDS Pension Plan or any other benefit plans (collectively, the “Plans”), covering active or retired Grandfathered Employees and Non-Grandfathered Employees with respect to employees at Portsmouth and Paducah Gaseous Diffusion Plant Sites, the Contractor shall cooperate with and transfer to the new contractor the responsibility for sponsorship, and management and administration of such Plans consistent with direction from the Contracting Officer.
- (B) If this Contract expires, terminates and/or is terminated partially or completely and DOE has not awarded a contract to a new contractor under which a new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of the Contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:
  - (1) Subject to Paragraph (B)(2) below and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
  - (2) The Contractor and DOE shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of “Contract Completion.” However, if the Contractor and DOE have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration

of the Plans prior to or at the time of “Contract Completion,” unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable contract provisions.

- (C) Because the UDS Pension Plan and other benefit plans for Grandfathered Employees is a single employer pension plan, notwithstanding paragraphs (A) and (B) above, the Contractor shall remain the sponsor of the UDS Pension Plan and other benefit plans for Grandfathered Employees at both the Portsmouth and Paducah Gaseous Diffusion Plant Sites, unless and until the Contracting Officer directs the Contractor to proceed in accordance with paragraphs (A) and (B) above.
- (D) In the event a transfer of assets into or from the UDS Pension Plan is determined to be necessary, the Contractor shall cooperate fully in the transfer of any assets in a manner consistent with any fiduciary duty, applicable law and subject to the approval and direction of the Contracting Officer.

#### **H.16 LABOR RELATIONS – PORTSMOUTH, OH**

- (A) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (B) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
  - (1) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the

requirements of FAR Subpart 22.1 and DEAR Subpart 970.2201 and all applicable Federal and state labor relations law.

(2) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

(C) Consistent with applicable labor law and regulations for that work that is being performed by members of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers (USW) on the effective date of this Contract, the Contractor agrees to initially consult with USW regarding the initial terms and conditions of employment and to recognize USW as the collective-bargaining representative for employees performing work that has historically and traditionally been performed by USW members and is covered in the scope of this Contract, and to bargain in good faith to a collective bargaining agreement that gives due consideration to applicable terms and conditions of the existing UDS, LPP, TPMC, and USEC collective bargaining agreement(s) for work at the Portsmouth Gaseous Diffusion Plant Site.

#### **H.17 WORKFORCE RESTRUCTURING- PORTSMOUTH, OH**

Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing in accordance with DOE 350.1 and other related guidance. The Contractor shall provide information as directed by the Contracting Officer related to workforce restructuring activities and to enable compliance with Section 3161 of the *National Defense Authorization Act for Fiscal Year 1993* and any other DOE guidance pertaining to employees who may be eligible for provisions of the Act. The Contractor shall supply workforce restructuring related information and reports as needed by DOE. The Contractor shall extend displaced employee hiring preferences in accordance with the Section I Clause entitled, *DEAR 952.226-74, Displaced Employee Hiring Preference* and Clause H.11, *Workforce Transition and Employee Hiring Preferences – Portsmouth, OH*.

#### **H.18 DEFINITIONS – PADUCAH, KY**

For purposes of Clause H.19, *Workforce Transition and Employee Hiring Preferences – Paducah, KY*; Clause H. 20, *Employee Compensation: Pay and Benefits – Paducah, KY*; Clause H.21, *Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY*; Clause H.22, *Workforce Transition and Benefits Transition: Plans and Timeframes – Paducah, KY*; H.23, *Post-Contract Responsibilities For Pension and Other Benefit Plans – Paducah, KY*; and H.24, *Labor Relations – Paducah, KY*, the following definitions are applicable (unless otherwise specified):

- (A) “Workforce Transition Period” means the six month period following the date of the Contract Notice to Proceed issued pursuant to Section F.2(a) of this Contract.
- (B) “Grandfathered Employees” means employees who are defined as Grandfathered Employees under the pension plan sponsored by the Uranium Disposition Services, LLC (UDS) (Uranium Disposition Services, LLC Pension Plan for Grandfathered Employees, (hereinafter “UDS Pension Plan”) in accordance with the terms of the UDS Pension Plan and applicable law.
- (C) “UDS Incumbent Contractor” means Uranium Disposition Services, LLC (UDS, Inc.) and its first and second tier subcontractors at the Paducah Gaseous Diffusion Plant Site and/or at the UDS Office located in Lexington, Kentucky (Lexington Office) under Contract DOE DE-AC-05-02OR22717.
- (D) “UDS Incumbent Employees means employees (1) who hold regular appointments or who are regular employees on the rolls of UDS, Inc and Grandfathered Employees on the rolls of UDS Inc’s first and second tier subcontractors; and (2) who are employed at the Paducah Gaseous Diffusion Plant Site and/or at the Lexington Office.
- (E) “USEC” means the United States Enrichment Corporation.
- (F) “USEC Employees” means employees who hold regular appointments or who are regular employees on the rolls of USEC at either the Portsmouth or Paducah Gaseous Diffusion Plant Site. The applicable site will be identified in the relevant paragraphs and/or clause(s). If employment at a specific site is not identified, the clause(s) or paragraphs are applicable to USEC Employees employed at both Gaseous Diffusion Plant Sites.
- (G) “Non-Grandfathered Employees” means employees who are not defined as Grandfathered Employees under the UDS Pension Plan in accordance with the terms of the UDS Pension Plan and applicable law.
- (H) “SST” means Swift & Staley mechanical Contractors, Inc (SST, Inc) and its first and second tier subcontractors under DOE Contract DE-AC24-05OH20178.
- (I) “SST Employees” means employees (1) who hold regular appointments or who are regular employees on the rolls of SST, Inc and Grandfathered Employees on the rolls of SST, Inc’s first and second tier subcontractors; and (2) who are employed at the Paducah Gaseous Diffusion Plant Site under DOE Contract DE-AC24-05OH20178 during the Workforce Transition Period.
- (J) “PRS” means Paducah Remediation Services, LLC (PRS, LLC) and its first and second tier subcontractors under DOE Contract DE-AC30-06EW05001.
- (K) “PRS Employees” means employees (1) who hold regular appointments or who are regular employees on the rolls of PRS, LLC and Grandfathered Employees on the

rolls of PRS, LLC's first and second tier subcontractors; and (2) who are employed at the Paducah Gaseous Diffusion Plant Site under DOE Contract DE-AC30-06EW05001 during the Workforce Transition Period.

(L) "Paducah Contractors" means the UDS Incumbent Contractor, PRS, SST, and USEC.

#### **H.19 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES – PADUCAH, KY**

(A) Hiring Preferences. Employees will receive a right of first refusal and /or other preference in hiring for vacancies for non-managerial positions (i.e. all those below the first line of supervision) in non-construction activities in Section C, Statement of Work (SOW), in accordance with this clause, any applicable collective-bargaining agreement(s), and site seniority, as set forth below.

(1) During the Workforce Transition Period, the Contractor shall provide the right of first refusal and preferences in hiring in the following order of precedence:

- (a) The Contractor shall give a right of first refusal for vacancies in non-managerial positions under this Contract to individuals (1) who are UDS Incumbent Employees, USEC Employees who have been identified by their employer as being at risk of being involuntarily separated, PRS Employees who have been identified by their employer as being at risk of being involuntarily separated, and SST Employees who have been identified by their employer as being at risk of being involuntarily separated; (2) who are employed at the Paducah Gaseous Diffusion Plant Site; and (3) who hold positions or perform functions during the Workforce Transition Period that are substantially equivalent to the vacancies in such non-managerial positions under this Contract and also to individuals who held positions or performed functions during the six months preceding the first day of the Workforce Transition Period that are substantially equivalent to the vacancies in such non-managerial positions under this Contract.
- (b) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are UDS Incumbent Employees, USEC Employees who have been identified by their employer as being at risk of being involuntarily separated, PRS Employees who have been identified by their employer as being at risk of being involuntarily separated, and SST Employees who have been identified by their employer as being at risk of being involuntarily separated; (2) who are employed at the Paducah Gaseous Diffusion Plant Site; and (3) who meet the qualifications for a particular position.

- (c) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are UDS Incumbent Employees, USEC Employees who have been identified by their employer as being at risk of being involuntarily separated, PRS Employees who have been identified by their employer as being at risk of being involuntarily separated, and SST Employees who have been identified by their employer as being at risk of being involuntarily separated; (2) who are employed at the Paducah Gaseous Diffusion Plant Site; and (3) who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.21(A).
  - (d) Subsequent to the application of the right of first refusal in Paragraph (A)(1)(a) and the preferences in hiring in Paragraphs (A)(1)(b) and (c) above, the Contractor shall give a preference in hiring for vacancies pursuant to Paragraph (A)(3) below.
- (2) After the Workforce Transition Period and continuing throughout the remaining period of performance under this Contract, the right of first refusal and/or other preferences in hiring shall be provided in the following order of precedence:
- (a) The Contractor shall give a right of first refusal in hiring for vacancies in non-managerial positions under this Contract to USEC Employees (1) who are employed at the Paducah Gaseous Diffusion Plant Site; (2) who have been identified by their employer as being at risk of being involuntarily separated; and (3) who hold or have held positions or perform or have performed functions which are substantially equivalent to vacancies in such non-managerial positions or functions under this Contract.
  - (b) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract, to USEC Employees (1) who are employed at the Paducah Gaseous Diffusion Plant Site; and (2) who have been identified by their employer as being at risk of being involuntarily separated, in the following order of precedence:
    - (i) USEC Employees who meet the qualifications for a particular position.
    - (ii) USEC Employees who may not meet the qualifications for a particular position but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.21 (A).

- (c) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to SST Employees and PRS Employees (1) who are employed at the Paducah Gaseous Diffusion Plant Site at the time of the vacancies; and (2) who have been identified by their employer as being at risk for involuntary separation, in the following order of precedence:
  - (i) PRS Employees and SST Employees who hold positions or perform functions at the time the vacancy arises that are substantially equivalent to the vacancies in such non-managerial positions under this Contract.
  - (ii) PRS Employees and SST Employees who meet the qualifications for particular positions.
  - (iii) PRS Employees and SST Employees who may not meet the qualifications for a particular position but who agree to become qualified and can become qualified by the commencement of active employment under this Contract for the particular positions with the training provided pursuant to Clause H.21(A).

For purposes of this paragraph (2)(c), the phrase “during the Workforce Transition Period” contained in Clause H.18(I)(2) and (K)(2), is not applicable. The respective employees are to be employed at the Paducah Gaseous Diffusion Plant Site at the time of the vacancy.

- (d) Subsequent to the application of the right of first refusal in Paragraph (A)(2)(a) and the preferences in hiring in Paragraphs (A)(2)(b) and (c) above, the Contractor shall give a preference in hiring for vacancies in the order of precedence as set forth in Paragraph (A)(3) below.
- (3) During the entire period of performance under this Contract, but subordinate to the preferences set out in Paragraphs (A)(1)(a) – (c) and (A)(2)(a) – (c) above, the Contractor shall provide preferences in hiring in the following order of precedence:
  - (a) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to USEC Employees employed at the Paducah Gaseous Diffusion Plant Site (1) who have been identified by their employer as being at risk of being involuntarily separated from employment by a plant closing or mass layoff (as such terms are defined in Section 2101(a)(2) and (3) of Title 29 of the United States Code) at the Paducah Gaseous Diffusion Plant Site; and (2) who are qualified and/or who may not meet the

qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.21(A).

- (b) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are former employees of USEC, former employees of the UDS Incumbent Contractor, and former employees of the UDS Incumbent Contractor's first and second-tier subcontractors; and (2) who are entitled to recall rights consistent with any applicable site seniority and any applicable collective bargaining agreement(s) at the Paducah Gaseous Diffusion Plant Site.
- (c) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who are Grandfathered Employees and who are former employees of the UDS Incumbent Contractor, PRS, SST, and USEC at the Paducah Gaseous Diffusion Plant Site; (2) who have been involuntarily separated (other than for cause) from employment; and (3) who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled "DEAR 952.226-74, Displaced Employee Hiring Preference" and with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees.
- (d) The Contractor shall give a preference in hiring for non-managerial positions under this Contract to individuals (1) who are former employees of the UDS Incumbent Contractor, PRS, SST, and USEC; and any other DOE contractor at the Paducah Gaseous Diffusion Plant Site; (2) who were involuntarily separated (other than for cause) from employment; and (3) who are eligible for the hiring preference contained in the clause in Section I of this Contract entitled "DEAR 952.226-74, Displaced Employee Hiring Preference" and with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time, regarding the preferential hiring of employees.
- (e) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who were formerly employed by any other DOE contractor at a DOE defense nuclear facility; and (2) who are eligible for the hiring preference contained in the clause entitled "DEAR 952.226-74, Displaced Employees Hiring Preference" as provided in that clause and with the provisions of any applicable Work Force Restructuring Plan, as

amended from time to time, regarding the preferential hiring of employees.

(f) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who were formerly employed at the Paducah Gaseous Diffusion Plant Site by the UDS Incumbent Contractor, PRS, SST, and USEC; (2) who were involuntarily separated (other than for cause) from their employment at the Paducah Gaseous Diffusion Plant Site; and (3) who are qualified for the position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.

(g) The Contractor shall give a preference in hiring for vacancies in non-managerial positions under this Contract to individuals (1) who have separated from employment at the Paducah Gaseous Diffusion Plant Site; (2) who are not barred from seeking employment at the Paducah Gaseous Diffusion Plant Site by the terms of employee waivers or releases of claims they executed; and (3) who are qualified for a particular position or who may not meet the qualifications for a particular position, but who agree to become qualified and can become qualified by the commencement of active employment under this Contract.

(4) Clauses H.19 (A)(1), (2), and (3) do not prohibit the Contractor from selecting the Contractor's existing employees at the Portsmouth Gaseous Diffusion Plant Site for positions or functions under this Contract

(B) Costs. Any costs incurred by the Contractor as a result of the Contractor's failure to comply with the hiring preferences as set forth in this Contract will be unallowable, unless such costs were incurred as the result of the Contracting Officer's direction.

## **H.20 EMPLOYEE COMPENSATION: PAY AND BENEFITS – PADUCAH, KY**

### **(A) Contractor Employee Compensation Plan**

The Contractor shall submit by the end of the 90 day Mobilization and Transition Phase identified in Section F.2(b)(1), a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

(B) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 970.3102-05-6; "Compensation for Personal Services" (Total Compensation System). DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan approved by the Contracting Officer.

(C) Appraisals of Contractor Performance

DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.

(D) Reports and Information

The Contractor shall provide the Contracting Officer the following reports and information with respect to pay and benefits provided under this Contract:

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation.
- (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
- (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in Paragraphs (F)(3)(a) and (b) below.

(E) Pay and Benefits Programs

The Contractor shall establish pay and benefit programs for employees in accordance with applicable law, the terms and conditions of this Contract, including Clause H.21, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY, applicable collective bargaining agreement(s), and the following requirements as set forth below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

(1) Pay

(a) For at least the first year of the term of the Contract or the first year after issuance of the Contract Notice to Proceed, whichever is longer the Contractor shall provide equivalent pay to the following employees hired by the Contractor as compared to pay provided to those employees by the UDS Incumbent Employees, PRS, SST, and/or USEC:

(i) UDS Incumbent Employees hired by the Contractor;

(ii) USEC Employees hired by the Contractor for positions or to perform functions for the Contractor that are substantially equivalent to the positions held or functions they performed for USEC at the Paducah Gaseous Diffusion Plant Site; and

(iii) PRS Employees and SST Employees hired by the Contractor for positions or to perform functions for the Contractor that are substantially equivalent to the positions held or functions they performed for their respective employers, PRS, and SST at the Paducah Gaseous Diffusion Plant Site.

(b) All other employees hired by the Contractor shall receive pay which is competitive with the industry from which the Contractor recruits its employees, and in accordance with the Contract, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act.

(2) Pension and Other Benefits. The Contractor shall provide a total package of benefits to UDS Incumbent Employees, USEC Employees, PRS Employees, and SST Employees, and all other employees who are hired by the Contractor in accordance with the terms and conditions of this Contract, any applicable collective bargaining agreement(s), and applicable law.

(3) Cash Compensation

- (a) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
  - (i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Total Compensation System.
  - (ii) Any proposed major compensation program design changes prior to implementation.
  - (iii) An Annual Compensation Increase Plan (CIP).
  - (iv) Individual compensation actions for Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.
  - (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
- (b) The Contracting Officer's approval of individual compensation actions will be required only for key personnel as identified in Clause H.8, Key Personnel of this Contract, and all other named key personnel, management and senior personnel as identified by the Contracting Officer.
- (c) Severance Pay is not reimbursable under this Contract for an employee who:
  - (i) Voluntarily separates, resigns or retires from employment,
  - (ii) Is offered comparable employment with a successor/replacement contractor,
  - (iii) Is offered comparable employment with a parent or affiliated company, or
  - (iv) Is discharged for cause.
- (d) Service credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(F) Pension and Other Benefit Programs

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (2) Cost reimbursement for pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described below.
- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (a) and (b) below. The studies shall be used by the Contractor as part of its performance self-assessment described in Paragraph (D)(4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
  - (a) An Employee Benefits Value Study (Ben-Val), every two years each for Grandfathered Employees and Non-Grandfathered Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Grandfathered Employees and Non-Grandfathered Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources; and
  - (b) An Employee Benefits Cost Study Comparison, annually each for Grandfathered Employees and Non-Grandfathered Employees, that analyzes the Contractor's employee benefits cost for Grandfathered Employees and Non-Grandfathered Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer for approval.

- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.
- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
- (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
- (9) Cost reimbursement for Post Retirement Benefits (PRBs) is contingent on DOE approved service eligibility requirements for PRBs that shall be based on a minimum period of continuous employment service not less than five years under a DOE cost-reimbursement contract(s) immediately prior to retirement. Notwithstanding the previous sentence, the costs of PRBs will be reimbursed for individuals meeting the DOE-approved eligibility requirements of the applicable DOE-approved employee benefit plan. Unless required by Federal or state law, advance funding of PRBs is not allowable.

(G) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the Internal Revenue Code (IRC) and Employee Retirement Income Security Act (ERISA).
- (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable law and regulations.
- (3) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
- (4) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other

pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.

- (5) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year:
  - (a) Copies of IRS forms 5500 with schedules; and
  - (b) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (6) Prior to the adoption of any changes to a pension plan for which DOE reimburses costs, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Contractor Employee Compensation Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6:
  - (a) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and
  - (b) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (7) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.

## **H.21 SPECIAL PROVISIONS APPLICABLE TO WORKFORCE TRANSITION AND EMPLOYEE COMPENSATION: PAY AND BENEFITSS – PADUCAH, KY**

- (A) Training. The Contractor will establish a training program specifically for the purpose of training individuals pursuant to Clauses H.19(A)(1)(c), H.19(A)(2)(b)(ii) and (c)(iii), and H.19(A)(3)(a). The one-time training program will be provided to individual employees and will not exceed six months in duration and \$5,000 in cost (subject to availability of funding) per person, in addition to wages and benefits.

(B) Benefit Plans. The Contractor shall provide pension and other benefit plans, to Grandfathered Employees and Non-Grandfathered Employees hired by the Contractor and service credit for leave as set forth below:

- (1) Grandfathered Employees. Grandfathered Employees shall be provided pension and other benefits in accordance with applicable law, any applicable collective bargaining agreement(s), and the provisions of the UDS Pension Plan and other existing benefit plans for Grandfathered Employees. Within 90 days after the Contract Notice To Proceed, the Contractor shall become the sponsor of the UDS Pension Plan, and other existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post retirement benefit (PRB) plans, as applicable, for Grandfathered Employees and retired plan participants, with primary responsibility for management and administration of these plans. The Contractor shall also have primary responsibility for maintaining the qualified status of the plans. No employee who qualifies as a Grandfathered Employee under the UDS Pension Plan shall lose the right to participate in the UDS Pension Plan as a result of this transition.
- (2) Non-Grandfathered Employees. Non-Grandfathered Employees shall receive a benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with this Contract, any applicable collective bargaining agreement(s), and applicable law, including Section 4(c) of the Service Contract Act.
- (3) Sponsorship Timing. Notwithstanding any other clause in this Contract, the Contractor shall ensure that it becomes the sponsor of the UDS Pension Plan and other existing benefit plans (or comparable successor plans if continuation of the existing plans is not practicable) including post-retirement benefit (PRB) plans, as applicable, for Grandfathered Employees no later than the date that the Contractor becomes the employer for Grandfathered Employees at both the Portsmouth and Paducah Gaseous Diffusion Plant Sites, and at the Lexington Office, so that that there is uninterrupted and continuous participation by Grandfathered Employees in the foregoing plan(s).
- (4) Service Credit For Leave.
  - (a) For UDS Incumbent Employees, PRS Employees, and SST Employees, who are hired by the Contractor pursuant to Clauses H.19(A)(1)(a), (b), and (c), and (A)(2)(c), the Contractor shall carry over the length of service credit for leave as well as leave balances accrued as of the date these employees are hired by the Contractor. Service credit for the represented workforce shall be applied consistently with any applicable collective bargaining agreement(s), and applicable law.

(b) For USEC Employees hired by the Contractor, the Contractor shall carry over the length of service credit from USEC for purposes of determining rates of accruing leave for these employees as required by and consistent with any applicable collective bargaining agreement(s), and applicable law.

(5) Service Credit for Fringe Benefits Other Than Leave. Consistent with the terms of the applicable benefit plan(s), the Contractor shall credit all UDS Incumbent Employees, PRS Employees, and SST Employees hired by the Contractor under this Contract with their current length of service toward fringe benefits, which also includes retirement benefits and severance pay. Consistent with the terms of the plan(s), the transition of these employees during the first six months of this Contract from the UDS Incumbent Contractor, LPP, TPMC, and USEC to the Contractor shall not constitute a break in service under the plan(s). Service credit for all individuals hired by the Contractor shall be applied consistent with any applicable collective bargaining agreement(s) and with applicable law. Service credit for purposes of severance pay is subject to Clause H.20 (E)(3)(d).

(C) Annual Actuarial Evaluation. Because the Contractor has the responsibility for administering and maintaining the qualified status of all pension and other benefit plans that it sponsors under this Contract, the Contractor shall submit to the Contracting Officer annual actuarial evaluations for all applicable benefit plans as well as certify that the benefit plans are in full compliance with IRC and ERISA requirements. Such certification shall demonstrate that the benefit plans are qualified under the IRC. This evaluation shall include but not be limited to written reports relating to how the benefit plans pass IRC discrimination, participation and coverage testing requirements. Each detailed annual written actuarial evaluation shall identify any conditions that may adversely affect the qualification status of the plans within eighteen months or less of the date of the evaluation, including but not limited to discrimination, participation and coverage testing requirements.

(1) Meeting Testing Requirements. The Contractor shall establish threshold factors that – based upon the experience of the UDS Pension Plan regarding the testing requirements – indicate when the UDS Pension Plan may not meet testing requirements within the next two plan years. Every six months, the Contractor shall identify when it may not meet testing requirements for the current plan year and the following plan year.

(2) Failure to Meet Test Requirements. In the case of the approved threshold factors described in Paragraph (C)(1) above and other factors as approved or requested by the Contracting Officer indicate that the Contractor may not meet testing requirements, the Contractor shall provide the Contracting Officer with a corrective action plan for addressing the potential or actual failure to meet testing requirements and quarterly updates on the status for

testing purposes. After the corrective action plan has been submitted and approved by the Contracting Officer, the Contractor shall provide quarterly updates on the status for testing purposes.

(D) Changes to the UDS Pension Plan. In addition to any other provisions of this Contract, including but not limited to Clauses H.20(G)(6) and (7), any changes or amendments to the UDS Pension Plan are subject to Contracting Officer prior approval and shall be in accordance with applicable law, including compliance with any applicable collective bargaining agreement(s).

## **H.22 WORKFORCE TRANSITION AND BENEFITS TRANSITION: PLANS AND TIMEFRAMES – PADUCAH, KY**

(A) Workforce Transition Plan. The Contractor shall submit a written Workforce Transition Plan (WF Transition Plan) describing in detail the Contractor's plans and procedures as to how the Contractor will comply with the hiring preferences set forth in Clause H.19, Workforce Transition and Employee Hiring Preferences – Paducah, KY, Clause H.21(A), and this Paragraph (A). Notwithstanding timeframes identified elsewhere in the Contract, the Contractor shall perform the following activities in the specified timeframes:

- (1) Within ten days after issuance of the Contract Notice to Proceed, the Contractor shall:
  - (a) Submit to the Contracting Officer a description of any and all transition agreements that it intends to enter into with the Paducah Contractors to ensure compliance with Clauses H.19(A)(1) and (3) during the Mobilization and Transition Phase and during the second half of the Workforce Transition Period as defined in Clause H.18(A);
  - (b) Establish and submit to the Contracting Officer a written communication plan that details the communication that the Contractor and its subcontractors will engage in with the Paducah Contractors regarding implementation of the hiring preference requirements set forth in Clauses H.19(A)(1) and (3);
  - (c) Provide estimated costs and detailed breakouts of the costs to accomplish workforce transition activities within the timeframes specified; and
  - (d) Obtain information from the Paducah Contractors identifying their employees that have initially been identified as being at risk of being involuntarily separated. Provide and define a process as part of the transition agreements required in paragraph (1)(a) above for obtaining updated and continuous information throughout the Workforce Transition Period regarding the identification of employees by the

Paducah Contractors that have been identified as being at risk of being involuntarily separated.

- (2) Within 15 days after issuance of the Contract Notice to Proceed, the Contractor shall:
  - (a) Submit to the Contracting Officer copies of the draft WF Transition Plan for the Contractor and its first and second tier subcontractors, including processes and procedures regarding how the Contractor will implement and ensure compliance with the hiring preferences set forth in Clauses H.19(A)(1) and (3); and
  - (b) Establish a written communication plan with the UDS Incumbent Employees, PRS Employees, SST Employees, and USEC Employees regarding the implementation of the hiring preferences in Clauses H.19(A)(1) and (3) and provide a copy to the Contracting Officer.
- (3) Within 30 days after issuance of the Contract Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final Plan (WT Transition Plan) and the draft transition agreements in H.22(A)(1)(a), it proposes to enter into consistent with requirements of Clauses H.19(A)(1) and (3) and Paragraphs (A)(1) and (2) above.
- (4) Within 60 days after issuance of the Contract Notice to Proceed, the Contractor shall provide to the Contracting Officer copies of the final transition agreements described in H.22(A)(1)(a).
- (5) The Contractor shall submit reports to the Contracting Officer regarding the Contractor's and its subcontractors' implementation of the hiring preferences required by Clause H.19, Workforce Transition and Employee Hiring Preferences – Paducah, KY, in accordance with the timeframes set forth below. These reports shall include at a minimum the following information: employee hire dates or anticipated hire dates, employee salary levels, and the names of the former employers of the employees hired by the Contractor and/or hired by the Contractor's first and second tier subcontractors.
  - (a) During the Mobilization and Transition Phase identified in Section F.2(b)(1), such reports shall be provided to the Contracting Officer on a weekly basis.
  - (b) During the remainder of the Workforce Transition Period, such reports shall be provided to the Contracting Officer on a biweekly basis.
  - (c) After the Workforce Transition Period as defined in Clause H.18 (A), such reports shall be provided within the timeframes as requested by the Contracting Officer.

(6) Within six months after the issuance of the Contract Notice to Proceed, the Contractor shall provide a written description of the process that it will utilize in obtaining information from USEC, PRS, and SST regarding their respective employees who have been identified as being at risk of being involuntarily separated in order to comply with Clauses H.19(A)(2) and (A)(3)(a). The Contractor shall provide copies of all and any written agreements into which it has entered with both USEC, PRS (when applicable), and SST (when applicable) for transitioning their respective employees pursuant to Clauses H.19(A)(2) and (A)(3)(a).

(B) Benefits Transition. The Contractor shall submit a written draft Benefits Transition Plan within 20 days after issuance of the Contract Notice to Proceed describing in detail the Contractor's plans and procedures as to how the Contractor will comply with Clause H.20, Employee Compensation: Pay and Benefits – Paducah, KY, Clause H.21, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY, and this Paragraph (B). The Contractor shall provide a final written Benefits Transition Plan to the Contracting Officer within 30 days after issuance of the Contract Notice to Proceed. All transitions of the UDS Pension Plan and other existing benefit plans, as well as establishment of any new plans, shall be completed within 90 days after issuance of the Contract Notice to Proceed.

(1) The Contractor shall perform the following activities within the specified timeframes:

(a) Within ten days after issuance of the Contract Notice to Proceed, the Contractor shall:

(i) Provide the Contracting Officer with a list of Contractor personnel who will be responsible for transition of the UDS Pension Plan and other existing benefit plans and/or development of new benefit plans, including specifically the personnel responsible for ensuring assumption of the lead sponsorship of the UDS Pension Plan by the Contractor and contact information for the above personnel;

(ii) Request the UDS Incumbent Contractor to provide information and documents necessary for the Contractor to adhere to the requirements set forth in this Contract pertaining to sponsorship of the UDS Pension Plan and other existing benefits plans or establishment of any new benefits plans, including but not limited to the transition of the existing pension and other benefit plans or establishment of any new benefits plans on or before the end of the Mobilization and Transition Phase identified in Section F.2(b)(1);

- (iii) Provide estimated costs and detailed breakouts of the costs to accomplish workforce and benefits transition activities within the timeframes specified, including the costs for enrolled actuaries and counsel.
  
- (b) Within 15 days after issuance of the Contract Notice to Proceed, the Contractor shall provide to the Contracting Officer a list of the information and documents that the Contractor has requested from UDS pertaining to the transition of the UDS Pension Plan, and other existing benefit plans. The Contractor shall notify the Contracting Officer on a timely basis of any issues or problems that it encounters in obtaining information or documents requested from UDS. Regardless of such notification, the Contractor remains responsible under this Contract for ensuring compliance with the terms of this Contract, including the timeframes set forth in this clause and the requirements in Clause H.19, Workforce Transition and Employee Hiring Preferences, Clause H.20, Employee Compensation: Pay and Benefits – Paducah, KY and Clause H.21, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY.
  
- (c) Within 20 days after issuance of the Contract Notice to Proceed, the Contractor shall:
  - (i) Submit a detailed description of its plans and processes, including timeframes and specific projected dates for accomplishment of each activity necessary to ensure compliance with the requirements set forth in Clauses H.20 (E) and H.21(B), including requirements pertaining to the transition of employee benefit plans; and
  
  - (ii) Meet via televideo, teleconference, and/or in person with relevant personnel who administer the benefit plans for the UDS Incumbent Contractor. The meeting shall include the Contractor’s benefit plan administrators and personnel, head of human resources, ERISA counsel, actuaries, and any and all other personnel deemed necessary by the Contractor. During such meeting, the Contractor shall discuss all matters necessary to ensure the Contractor adheres to its sponsorship obligations under Clauses H.20(E)(2) and H.21, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY, including execution of transition agreements with the Paducah Contractors, as applicable. The minutes of the meeting as well as a written description of any substantive issues identified at

the meeting shall be submitted to the Contracting Officer within two days after the meeting.

- (d) Within 30 days after issuance of the Contract Notice to Proceed and as part of the written Benefits Transition Plan, the Contractor shall provide a written description of how the existing pension and other benefit plans provided to employees pursuant to Clause H.20, Employee Compensation: Pay and Benefits – Paducah, KY, and Clause H.21, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY will be amended or restated on or before the last day of the Mobilization and Transition Phase. If an asset transfer(s) and/or the creation of a new benefit plan(s) are necessary in order for the Contractor to adhere to the benefits sponsorship requirements set forth in this Contract, the Contractor shall provide a description of the necessary transactions, including but not limited to how the Contractor proposes to comply with the Contract and applicable law governing such transactions.
- (e) Within 45 days after issuance of the Contract Notice to Proceed, the Contractor shall:
  - (i) Submit to the Contracting Officer a draft Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract regarding employee compensation. The draft Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.
  - (ii) Submit to the Contracting Officer drafts of all amendments to or restatements of the pension and other benefit plans presently sponsored by the UDS Incumbent Contractor, including but not limited to amendments effectuating the change in lead sponsorship and administration of the UDS Pension Plan. If applicable, the Contractor shall also submit all draft restated benefit plans and draft Summary Plan Descriptions (SPDs) for pension and other benefit plans sponsored by the UDS Incumbent Contractor. Any and all such amendments shall comply with applicable law governing such transactions and changes in sponsorship of the plans.
  - (iii) Submit to the Contracting Officer drafts of any new benefit plan(s) as well as draft SPDs that the Contractor proposes to sponsor.

- (iv) Provide draft copies of the transition agreements which the Contractor will enter into with the Paducah Contractors to ensure the Contractor's compliance with the pay and benefits requirements set forth in Clauses H.20, Employee Compensation: Pay and Benefits – Paducah, KY and H.21 Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY. Copies of these executed transition agreements shall be provided to the Contracting Officer within two days of execution, but in no event later than the last day of the Mobilization and Transition Phase.
  - (f) No later than 60 days after issuance of the Contract Notice to Proceed and prior to the adoption of the documents identified in Paragraphs (B)(1)(e)(ii) and (iii) above, the Contractor shall submit the proposed final versions of these documents to the Contracting Officer for approval.
  - (g) The Contractor shall respond to any comments provided by the Contracting Officer under any of the above paragraphs within two days of receipt of the comments.
- (2) After the Workforce Transition Period and throughout the remaining period of performance of the Contract, the Contractor shall provide the following information promptly to the Contracting Officer upon the request of the Contracting Officer:
- (a) Documents relating to benefit plans offered to Contractor Employees, including but not limited to SPDs, all Plan documents, applicable amendments, employee handbooks that summarize benefits provided to employees and other documents that describe benefits provided to employees of the Contractor who perform work on this Contract, and
  - (b) Any and all other documents pertaining to implementation of and compliance with implementation of the compensation and benefit programs identified in Clause H.20, Employee Compensation: Pay and Benefits – Paducah, KY and Clause H.21, Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits – Paducah, KY.

### **H.23 POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS – PADUCAH, KY**

- (A) If this Contract expires, terminates, and/or is terminated partially or completely and DOE has awarded a contract under which a new contractor becomes the sponsor and assumes responsibility for management and administration of the UDS Pension Plan

or any other benefit plans (collectively, the “Plans”), covering active or retired Grandfathered Employees and Non-Grandfathered Employees with respect to employees at Portsmouth and Paducah Gaseous Diffusion Plant Sites, the Contractor shall cooperate with and transfer to the new contractor the responsibility for sponsorship, and management and administration of such Plans consistent with direction from the Contracting Officer.

(B) If this Contract expires, terminates and/or is terminated partially or completely and DOE has not awarded a contract to a new contractor under which a new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of the Contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:

(1) Subject to Paragraph (B)(2) below and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.

(2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of “Contract Completion.” However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of “Contract Completion,” unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor’s costs will be reimbursed pursuant to applicable contract provisions.

(C) Because the UDS Pension Plan and other benefit plans for Grandfathered Employees is a single employer pension plan, notwithstanding paragraphs (A) and (B) above, the Contractor shall remain the sponsor of the UDS Pension Plan and other benefit plans for Grandfathered Employees at both the Portsmouth and Paducah Gaseous Diffusion Plant Sites, unless and until the Contracting Officer directs the Contractor to proceed in accordance with paragraphs (A) and (B) above.

- (D) In the event a transfer of assets into or from the UDS Pension Plan is determined to be necessary, the Contractor shall cooperate fully in the transfer of any assets in a manner consistent with any fiduciary duty, applicable law and subject to the approval and direction of the Contracting Officer.

#### **H.24 LABOR RELATIONS – PADUCAH, KY**

- (A) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (B) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (1) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR Subpart 22.1 and DEAR Subpart 970.2201 and all applicable Federal and state labor relations law.
- (2) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.
- (C) Consistent with applicable labor law and regulations for that work that is being performed by members of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers (USW) on the effective date of this Contract, the Contractor agrees to initially consult with USW regarding the initial terms and conditions of employment and to recognize USW as the collective-bargaining representative for employees performing work that has historically and traditionally been performed by USW members and is covered in the scope of this Contract, and to bargain in good faith to a collective bargaining agreement that gives due consideration to applicable terms and conditions of the existing UDS, PRS, SST,

and USEC collective bargaining agreement(s) for work at the Paducah Gaseous Diffusion Plant Site.

## **H.25 WORKFORCE RESTRUCTURING –PADUCAH, KY**

Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing in accordance with DOE 350.1 and other related guidance. The Contractor shall provide information as directed by the Contracting Officer related to workforce restructuring activities and to enable compliance with Section 3161 of the *National Defense Authorization Act for Fiscal Year 1993* and any other DOE guidance pertaining to employees who may be eligible for provisions of the Act. The Contractor shall supply workforce restructuring related information and reports as needed by DOE. The Contractor shall extend displaced employee hiring preferences in accordance with the Section I Clause entitled, *DEAR 952.226-74, Displaced Employee Hiring Preference* and Clause H.19, Workforce Transition and Employee Hiring Preferences – Paducah, KY.

## **H.26 SOFTWARE MADE AVAILABLE FOR CONTRACTOR’S USE**

- (a) The Government, from time to time, may make certain software acquired under license available to the Contractor for its use in the performance of this contract.
- (b) The Contractor recognizes and acknowledges that such software or data contained therein may be proprietary and confidential to a third party.
- (c) The Contractor agrees that it and its employees will not use, copy, disclose, modify, or reverse engineer such software except as permitted by the license and any other terms and conditions under which the software is made available to the Contractor.
- (d) The Contractor is not authorized to violate any software licensing agreement, or to cause the Government to violate any licensing agreement. If, at any time during the performance of this contract, the Contractor has reason to believe that its utilization of Government-furnished software may involve or result in a violation of DOE’s licensing agreement, the Contractor shall promptly notify the CO, in writing, of the pertinent facts and circumstances. Pending direction from the CO, the Contractor shall continue to perform to the full extent possible without utilizing the software in question.
- (e) Paragraphs (a) through (d) of this clause shall flow down to all subcontracts.

## **H.27 GOVERNMENT-FURNISHED SERVICES AND ITEMS**

- (a) DOE recognizes that implementation of Section C in an optimized fashion is dependent upon many activities, including the Government-Furnished Services and Items (GFS/I) identified below.

- (b) DOE is committed to providing effective support to the Contractor throughout the period of contract performance, and the Contractor may request that DOE consider providing additional GFS/I. To manage the GFS/I to be furnished under the contract and to evaluate the additional GFS/I that may be required by the Contractor, the Contractor shall submit for DOE approval:
- (1) **GFS/I Request [D-38]**: a 12-month advance projection of GFS/I to be furnished under the Contract, to be submitted in accordance with Section F, and;
  - (2) **GFS/I Update [D-39]** (if needed): a quarterly update to the projection of GFS/I to be furnished under the Contract, to be submitted prior to each quarter.
- (c) DOE will review the GFS/I Request and GFS/I Update. If DOE decides to support the additional contractor-requested GFS/I, DOE will notify the Contractor within 30 days that the additional contractor-requested GFS/I can be provided, and will provide the Contractor details regarding the DOE action(s). The supported GFS/I will be added to Table H-1, Detailed Description of Government Furnished Services and Items, as a DOE commitment to the Contractor.
- (d) If DOE decides not to support a contractor request, DOE will notify the Contractor within 30 days that the requested GFS/I cannot be provided, and there will be no DOE commitment to the Contractor to furnish the GFS/I.
- (e) For the additional contractor-requested GFS/I, DOE will use its best efforts to meet additional GFS/I commitments to the Contractor. However, in the event that DOE is unable, for any reason, to provide the Contractor with its requested additional GFS/I, the Contractor remains fully and solely responsible for obtaining the needed services and/or information in a timely manner and without any further recourse against DOE.

<b>Table H-1 DETAILED DESCRIPTION OF GOVERNMENT-FURNISHED SERVICES AND ITEMS</b>		
<b>Scope</b>	<b>Requirement</b>	<b>GFS/I</b>
The Contractor shall support the operations of the conversion facilities at Portsmouth, OH and Paducah, KY by performing activities as described in Section C, Statement of Work	DOE shall ensure Government controlled data systems are available for contractor access as needed to provide infrastructure activities	DOE will ensure the following systems are available to the Contractor throughout the period of performance of this contract: Integrated Planning Accountability and Budget System (IPABS)  Facility Information Management System (FIMS)  Computerized Accident/Incident Reporting System (CAIRS)  Non-Compliance Tracking System (NTS) database Occurrence Reporting and Processing System (ORPS)  Foreign Access Central Tracking System (FACTS) database  Federal Telephone System Access Condition Assessment Information System (CAIS)  Work Force Information System (WFIS)
The Contractor shall submit documentation, reports, etc., to DOE during performance of the activities in the Statement of Work	DOE shall provide comments and/or approval of documentation, reports, etc.	DOE will use its best efforts to provide comments and/or approval of documentation, reports, etc., in a timely manner. (See Section F, Table F-1)
The Contractor shall process, store, package, and disposition products of the conversion facility in accordance with applicable laws, regulations and DOE directives.	DOE shall approve applicable procedures for the disposition of waste in accordance with applicable laws, regulations, and DOE directives.	DOE will provide, when available, the negotiated rates for disposal of low-level waste.
The Contractor shall manage the Cylinder Yards and operate the conversion facilities in accordance with the design, engineering documentation, safety basis, and all applicable laws, regulations, DOE directives and agreements.	DOE shall review and approve applicable plans and procedures for Cylinder Surveillance and Maintenance and safe operation of the Cylinder yards and conversion facilities	The required software, hardware, and engineering documentation to manage Surveillance and Maintenance, operate Cylinder Yards and Conversions Facilities will be provided.

## H.28 PROJECT CONTROL SYSTEMS AND REQUIREMENTS

### (a) Project Control System

- (1) The Contractor shall propose a project work breakdown structure that is compliant with the guidelines in ANSI/EIA Standard 748 (current version at the time of award) and that achieves completion of the work in a safe and cost effective manner and within the identified funding. The Contractor shall establish, maintain and use a project control system that accurately reflects the project status relative to cost and schedule performance and tracks progress against the approved baseline. This system shall be fully integrated with the financial accounting systems to ensure consistent reporting of costs and will be reviewed during the baseline review. The Contractor shall maintain a project control system in accordance with the following requirements:
  - (i) DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets, July 28, 2006;
  - (ii) DOE Manual 413.3-1-1, Project Management for the Acquisition of Capital Assets, March 28, 2003;
  - (iii) Integrated Planning, Accountability, and Budgeting System Information Systems (IPABS-IS) Data Requirements, February 16, 1999, and subsequent updates;
  - (iv) Integrated Planning, Accountability, and Budgeting System (IPABS) Handbook, February 16, 1999, and subsequent updates;
  - (v) HQ Baseline Change Control Charter, Office of Environmental Management, Rev. 0, June 23, 1999.
- (2) The Contractor shall provide the CO with a detailed written description of the proposed project control system for review and approval in accordance with Section F. Cost effective, graded application of controls will be a critical factor in determining acceptability of the proposed system.
- (3) The COR or designated representatives will conduct a compliance review of the Contractor's proposed project control system to determine if the description and procedures meet the intent of this contract clause.

### (b) Baseline Development and Cost Collection

- (1) The Contractor shall develop and submit a **DUF6 Baseline [D-40]** (see Section F, Table F-1) for each contract, Paducah and Portsmouth, consistent with the terms and conditions of this contract and their proposal in accordance with Section F. The DUF6 Baseline shall be developed to the appropriate

level below WBS Level 5, consistent with the Contractor's project management approach and systems. The DUF6 Baseline shall be developed in accordance with DOE Order 413.3A and include of the scope identified in Section C. The Work Breakdown Structure (WBS) shall provide the basis for the project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract.

- (2) The Contractor shall develop a **Risk Management Plan (RMP) [D-35]** (see Section F, Table F-1) that identifies internal and external risks to achieving the project baseline. The RMP will define and analyze risks and provide a quantitative assessment of potential cost and schedule impacts at 50% and 80% confidence levels, as well as document what actions have been taken to mitigate potential impacts to scope execution. The Contractor shall provide its assessment of the impact these uncertainties may have on project cost and schedule. If, in the Contractor's opinion, the risk to cost and schedule is significant, the Contractor shall describe its approach to eliminate, avoid, or mitigate the risks. When developing approaches to eliminate, avoid or mitigate risks to cost and schedule, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. The RMP shall be updated at least annually.
- (3) Cost estimates shall be integrated with the WBS and shall use estimating methodologies consistent with DOE Order 413.3A. Costs shall be discernable by Budget and Report (B&R) code, direct, indirect and fee. The project control system must maintain capability to provide Total Estimated Cost (TEC), Total Project Cost (TPC), Estimates to Complete (ETC), and Estimates at Completion (EAC), along with tracking of each of these costs and schedule elements.
- (4) Schedules shall be developed that integrate with the WBS. Project work scope shall be included regardless of funding source. Each WBS element will have an assigned duration that will be based on work scope. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. The project schedule shall clearly depict critical path activities and milestones. Activities shall be resource loaded at the lowest practical level of the WBS, but at a maximum at least one level below the scope identified in Section C to develop time-phased budgets that are integrated with the schedule.
- (5) The Contractor shall analyze proposed or directed funding changes for their impact on technical, schedule, and cost elements of the baseline, along with potential impacts to the Cost and Schedule.

- (6) Any contractor requested changes or DOE directed written changes shall be addressed through the established change control process. This process will not, in and of itself, provide the authority to change the Cost and Schedule.
- (7) The Contractor shall provide variance calculations and analysis for schedule and cost performance. Performance analysis techniques shall be commercially accepted and documented and shall utilize earned value and variance calculation methods contained in ANSI/EIA-748. Performance metrics (e.g., quantities, safety, regulatory compliance) will be established for all technical work scope unless otherwise approved by the CO. Cost variance percentage is the difference between the budgeted cost of work performed and the actual cost of work performed, divided by the budget cost of work performed, multiplied by 100. Schedule variance percentage is the difference between the budgeted cost of work scheduled and the actual cost of work scheduled, divided by the budgeted cost of work scheduled, times 100. For variances greater than  $ACWP \div BCWP \geq 1.1$  or  $ACWS \div BCWS \geq 1.1$  at Level 4 of the WBS, the analyses shall detail the causes for variance and corrective actions required.
- (8) The EAC for the project shall be evaluated monthly to ensure that it is consistent with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk.
- (9) Actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Actual costs incurred must be recorded in the same accounting period that performance is measured and recorded. Any indirect costs shall also be collected and appropriately allocated to the WBS elements.
- (10) Costs shall be collected at a charge number level, including the work elements identified in Section C, and shall be summed through the WBS. Incorrect charges on time cards or other administrative or accounting errors shall be corrected in a timely manner.
- (11) The Contractor shall support DOE in planning and managing the Critical Decision (CD) 2/3 approval process to ensure that the form and content of all contractor documents and actions required for CD-2/3 approval meet the requirements of DOE Order 413.3A. This will include coordinating with the other DOE site contractors, as necessary, to ensure compatibility of information and documents; supporting DOE in integrating and consolidating information and documents to represent the combined information from both Portsmouth and Paducah contracts; and participating in assessments and reviews needed to achieve CD-2/3 decision.
- (12) The Contractor will establish, maintain, and use a **Project Control Management System [D-41]** (see Section F, Table F-1) that accurately

reflects the status of schedule performance and tracks progress against the approved baseline. The Contractor will coordinate with the other DOE site contractors, as necessary, to obtain schedule input. This schedule must also include GFS/I activities. The Contractor will report monthly to DOE on contractor earned value and integrated schedule progress and schedule performance, and will assist DOE in interpreting, analyzing, and reporting earned value data and project progress.

- (13) At the direction of DOE, the Contractor shall participate in meetings, conference calls, conferences, and other similar forums relating to Project Integration responsibilities and shall be available to respond to informal DOE requests for information related to Integrated Project Management.
- (14) The Contractor shall provide written notes for meetings, conferences, and any other forum to DOE, within five calendar days of the meeting. The Contractor shall prepare and distribute a meeting or conference agenda two calendar days prior to any meeting or conference requested by the Contractor.

(c) Project Reporting

- (1) The Contractor shall provide **Weekly/Monthly Status Reports [D-42]** (see Section F, Table F-1) monthly status reports on the project in a format approved by the CO. The Contractor shall not change the WBS without the approval from the CO. At a minimum, the status shall include cost and schedule variance at a level 4 of the WBS with rollup to the subproject, the status of major milestones, and critical technical or programmatic issues. The report shall include overall narrative summaries, analysis of schedule trends and project float, critical path performance, analysis of critical manpower skills of other resources, budget and funding figures, and project risk updates. Earned Value information shall be reported in the following Office of Management and Budget Contractor Performance Report Formats (DID-MGMT-81466) as required by “Establishing the Requirements for an Earned Value Management System, Standardizing Minimal Reporting Requirements, and Implementing an Earned Value Management System Surveillance Program,” July 6, 2007.
  - (i) Format 1, DD Form 273411, Mar 05, Work Breakdown Structure
  - (ii) Format 2, DD Form 273412, Mar 05, Organizational Categories
  - (iii) Format 3, DD Form 273413, Mar 05, Baseline
  - (iv) Format 4, DD Form 273414, Mar 05, Staffing
  - (v) Format 5, DD Form 273415, Mar 05, Explanations and Problem Analysis

- (2) **Quarterly Critical Analysis Report (QCAR) [D-43]** (see Section F, Table F-1). Every three months, the Contractor shall prepare and submit a comprehensive report that critically analyzes the overall status of the baseline as well as any key metrics. This report shall include overall narrative summaries, analysis of schedule performance trends and project float, critical path performance, analysis of critical manpower skills of other resources, budget and funding figures, and project risk updates.
- (3) Plans and reports shall be prepared in such a manner as to provide for consistency with Section C, the baseline, and the approved WBS. The Contractor's reporting system shall be able to provide for the following at the Level 4 WBS:
  - (i) Timely, within 21 calendar days, incorporation of contractual baseline changes affecting estimated cost and schedule;
  - (ii) Reconciliation of estimated costs for those elements of the WBS with current performance measurement budgets, in terms of changes to the authorized work and internal re-planning;
  - (iii) Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments;
  - (iv) Changes to records pertaining to work performed that will change previously reported costs for correction of errors and routine accounting adjustments;
  - (v) Revisions to the contract estimated costs for DOE-directed changes to the contractual effort
- (4) The Contractor shall provide the CO, or the COR, access to any and information and documents comprising the Contractor's project control and reporting system. Generally, access will not be requested more than one level below the level chosen by the CO for control and approval authority, except during compliance reviews.
- (5) The Contractor shall include graded reporting requirements in subcontracts adequate to fairly evaluate performance and support the Contractor's reporting requirements.

(d) Baseline Change Management

- (1) The integrated scope, cost and schedule baseline is the source document for all project control and baseline change management. The processes for managing

and administering changes to all elements of the baseline shall be timely, formal, and documented. Baseline changes shall be proposed when:

- (i) Necessitated by significant project delays, events or other impacts.
  - (ii) The parties have negotiated an equitable adjustment in accordance with the Section I clause entitled “FAR 52.243-2 Changes-Cost-Reimbursement” or other clauses of this contract.
  - (iii) Cost and schedule variances necessitate a baseline change as determined and directed by the CO or COR.
- (2) Provided that the change does not affect total cost or schedule for the reasons stated above, the baseline change control thresholds for scope, cost and schedule shall be the lesser of the following:

DOE Headquarters	\$10,000,000 or 20% of the WBS annually
Local DOE	\$ 5,000,000 or 10% of the WBS annually
Contractor	Up to the local DOE Level

Any baseline change exceeding the Contractor threshold must be submitted to the CO for approval. Additional work scope can only be authorized by the CO, regardless of the threshold level.

- (3) Specific change control time frames for consideration and approval will be established by the CO. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed, except to correct administrative errors. A record of approved changes, at any level, shall be maintained through the life of the project. Change control records shall maintain a clear distinction between approved changes in funding and baseline changes. Ownership of internal change control disposition records and EM Configuration Change Control Board records resides with DOE.
- (4) Any changes to contract cost, schedule, or fee shall be executed only through a contract modification by the DCO pursuant to the contract terms and conditions. Approved internal change control modifications to the Performance Measurement Baseline (PMB) may not imply the need for changes to the Contract Cost, Schedule or Fee.

## H.29 INFORMATION

- (a) Management of Information Resources. The Contractor shall design and implement Information Resources Management (IRM) capabilities as required to execute this contract in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources.

- (b) Release of Information. The Contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements.
  
- (c) Unclassified Controlled Nuclear Information (UCNI). Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this contract, may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and Section I clauses entitled, DEAR 952.204-2, Security Requirements and DEAR 952.204-70, Classification/Declassification.
  
- (d) Confidentiality of Information. To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the CO in writing. The foregoing obligations, however, shall not apply to:
  - (1) Information, which at the time of receipt by the Contractor, is in the public domain;
  - (2) Information, which is published after receipt thereof by the Contractor or otherwise, becomes part of the public domain through no fault of the Contractor;
  - (3) Information, which the Contractor can demonstrate, was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
  - (4) Information, which the Contractor can demonstrate, was received by it from a third party that did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the CO, of each employee permitted access to such information, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (d), with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the CO. Upon request from the CO, the Contractor shall

supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by contractor personnel.

- (e) The Government reserves the right to require the Contractor to include this clause or a modified version of this clause in any subcontract as directed in writing by the CO.

### **H.30 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS**

- (a) Consistent with the clause in Section I entitled, “Laws, Regulations, and DOE Directives,” the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor is responsible for complying with permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for activities under this contract (hereinafter referred to collectively as “permits”). Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take appropriate actions to obtain transfer of existing permits, and DOE will use reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.
- (b) Unless otherwise authorized by the CO, the Contractor must submit to DOE for DOE’s review and comment permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate contractor corporate officer, attesting to DOE that the document has been prepared in accordance with applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.

- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
- (e) In the event of termination or expiration of this contract, DOE will require the new contractor to accept transfer of environmental permits executed by the Contractor, or DOE will accept responsibility for such permits and the Contractor shall be relieved of future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.
- (f) The Contractor shall become a party-signatory to the Ohio EPA Director's Final Findings and Orders (DFF&O) prior to undertaking any cylinder-related activities covered by the DFF&O.
- (g) At the request of DOE, the Contractor shall become a party-signatory to the Agreed Order with The Commonwealth of Kentucky. The following agreement is currently in place at the Paducah Gaseous Diffusion Plant: Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet Agreed Order, October 3, 2003. In addition, the Contractor shall negotiate in good faith and become a party signatory to such other regulatory agreements or orders, as DOE may deem appropriate for the work performed pursuant to this contract.

### **H.31 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES**

- (a) The Contractor shall accept, in its own name, services of notices of violations or alleged violations (NOVs/NOAVs) issued by federal or state regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) With advance notice given to DOE, the Contractor shall conduct negotiations with regulators regarding NOVs/NOAVs and fine and penalties; however, the Contractor shall not make any commitments or offers to regulators that would bind the Government, including monetary obligations, without receiving written concurrence from the CO prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared

unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

- (c) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

### **H.32 NUCLEAR FACILITY OPERATIONS**

- (a) The activities under this contract include the operation of nuclear facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident, which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor will exercise a degree of care commensurate with the risk involved.
- (b) The Contractor shall comply with applicable DOE nuclear safety related rules, regulations, and directives and with those nuclear safety requirements (including reporting requirements and instructions) of DOE. Operations within the nuclear facility will be conducted in accordance with DOE approved authorization agreements.

### **H.33 COMPLIANCE WITH ORDERS, AGREEMENTS, AND REGULATORY AUTHORITIES**

In addition to the requirements of the Section I clause entitled “ DEAR 970.5204-2 Laws, Regulations, and DOE Directives” , the Contractor shall comply with any current or future orders and agreements with regulatory authorities pertaining to UF6 cylinders, including but not limited to the State of Ohio Director’s Final Findings and Orders, dated February 24, 1998, June 24, 2005, and February 1, 2008, and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet Agreed Order, October 3, 2003. In addition the Contractor shall comply with any future laws or regulations pertaining to any required activities under the contract.

### **H.34 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES**

- (a) This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as “the parties” for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term “environmental requirements” means requirements imposed by applicable federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.
- (b) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess

- any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents; is a permittee; or is the named subject of an enforcement action or assessment of a fine or penalty.
- (c) Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, clauses in Section I entitled, "Allowable Cost and Payment" and "Pre-Existing Conditions".

### **H.35 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE**

The Contractor shall establish an internal Price Anderson Amendments Act (Section 234a (42 U.S.C. 2282a) of the Atomic Energy Act of 1974, as amended) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system [D-46]. The Contractor shall also implement a Price Anderson Amendments Act reporting process, which meets applicable DOE requirements. The Contractor shall also be accountable for ensuring that subcontractors adhere to these requirements.

### **H.36 ALTERNATIVE DISPUTE RESOLUTION (ADR)**

It is federal policy, as enunciated in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 571, et seq., and Part 33 of the Federal Acquisition Regulation, to use consensual alternative means of dispute resolution "to the maximum extent practicable" to resolve issues in controversy involving the federal government. Therefore, should an issue in controversy arise in conjunction with or related to the performance of this contract, and should the parties not be able to resolve the issue through unassisted negotiations, prior to resorting to the formal claim and appeal process provided for under the "Disputes" clause and the Contract Disputes Act of 1978, 41 U.S.C. § 601, et seq. (CDA), they will consider using one or more alternative dispute resolution (ADR) techniques to achieve resolution of the issue. To that end, they will jointly or separately contact the United States Civilian Board of Contract Appeals (CBCA) in order to discuss possible ADR options and will exert their best efforts to devise a mutually acceptable agreement to establish terms and guidelines for ADR proceedings as may be appropriate.

This clause does not establish a condition precedent to the formal filing of a claim with the contracting officer or to the filing of an appeal pursuant to the CDA. Any attempt to

resolve an issue in controversy through non-binding ADR will be without prejudice to the parties' rights to adjudicate an issue not resolved through ADR. The particulars of any ADR proceedings will not be part of the administrative record for adjudication of the issue in controversy.

### **H.37 DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB), which are contained in implementation plans, and other DOE correspondence to the DNFSB (Department of Energy Implementation Plan for Defense Nuclear Facilities Safety Board Recommendation 95-1, Improved Safety of Cylinders Containing Depleted Uranium, October 16, 1995). The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations, which affect or can affect contract work. Based on the COR's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary in a safe and efficient manner. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

### **H.38 HAZARDOUS MATERIALS**

In implementation of the clause in Section I entitled, "FAR 52.223-3 Hazardous Material Identification and Material Safety Data," the Contractor shall obtain, review and maintain a material safety data sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

### **H.39 PRIVATELY GENERATED RESTRICTED DATA**

The DOE will not itself be providing any classified information as part of this contract. However, in the event that the Contractor introduces new or unique technology into the Conversion Process, the requirements of 10 CFR 1045.21, "Privately generated restricted data" may apply. If there is a chance that such technology will be utilized, the Contractor shall coordinate with DOE as soon as it is known that such technology will be used.

### **H.40 SITE SERVICES**

(a) The Contractor will be performing work at sites where other entities are conducting various activities, including other DOE prime contractors, subcontractors, and other organizations. These entities, including the Contractor, need to acquire or perform certain services in support of their activities that may be common to other entities on the site. In some instances it is to the net benefit to DOE for these services to be

- provided by one central source at the respective sites. Refer to Section J “DUF6 Services and Contractor Interface Requirements Matrix”.
- (b) The Contractor may receive services from and provide services to other prime contractors, subcontractors, or other organizations at the sites as approved by the CO or designee. These services may be provided in one of the following categories:
- (1) Services that are the responsibility of the Contractor, but the Contractor elects, or the CO or designee directs the Contractor, to purchase the service from another prime contractor, subcontractor, or other organization rather than perform the work with its own employees or acquire the service from one of its subcontractors.
  - (2) Services that are common to the Contractor, other prime contractors, subcontractors, or other organizations where the Contractor elects, or the CO or designee directs the Contractor, to provide such services to such entities where it is to the overall net benefit to DOE.
- (c) When services are acquired under these provisions, the Contractor shall maintain control and accountability for the work under this contract and shall execute appropriate agreements with the other entities.
- (d) Services which the Contractor is expected to purchase from other prime contractors, subcontractors, or other entities at the sites include protective services, fire protection, emergency response, and other services of this general nature where it is not to the overall benefit of DOE for there to be multiple sources for such services.

#### **H.41 EMPLOYEE CONCERNS PROGRAM**

The Contractor shall submit an implementation plan to the CO for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions. Guidance for preparation of an ECP Plan is provided in Section J, Attachment J-9. This plan will replace guidance in Section J, Attachment J-9 after CO approval.

#### **H.42 STANDARD INSURANCE REQUIREMENTS**

In accordance with Section I clause entitled “FAR 52.228-7 Insurance - Liability to Third Persons,” the following kinds and minimum amounts of insurance are required during the performance of this contract:

- (a) Worker’s Compensation and Employer’s Liability Insurance:
- (1) The amount required by the state in which work is performed under applicable worker’s compensation and occupational disease statutes.

(2) Employer's liability insurance in the amount required by FAR 28.307-2.

(b) General liability insurance.

Bodily injury liability coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(c) Automobile liability insurance.

Coverage shall be provided on a comprehensive basis. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of this contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

(d) The amount of liability coverage on other policies shall be commensurate with any legal requirements of the state and locality, plus sufficient to meet normal and customary claims.

#### **H.43 DEPARTMENT OF LABOR WAGE DETERMINATION**

In the performance of this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination in Section J. Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two years but not more often than yearly.

#### **H.44 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2006)**

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

#### **H.45 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### **H.46 MENTOR-PROTÉGÉ PROGRAM**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award-fee basis, the Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

#### **H.47 SUBCONTRACTOR FLOWDOWN REQUIREMENTS**

The Contractor agrees to include the provisions under FAR 52.219-8, Utilization of Small Business Concerns, in all subcontracts that offer further subcontracting opportunities. All subcontractors, except small business concerns that receive subcontracts in excess of \$550,000 must adopt and comply with a plan similar to the plan required by FAR 52.219-9, Small Business Subcontracting Plan.

Such plans will be reviewed by comparing them with provisions of FAR 52.219-9, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small, small disadvantaged, women-owned, Historically Underutilized Business Zone (HUBZone), veteran-owned small businesses, service-disabled veteran owned small businesses, historically black colleges and universities or minority institutions, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractors' facilities to review applicable records and subcontracting program process.

#### **H.48 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY**

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that: (1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor agrees to: (1) obtain the CO's approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features, and (3) have IPv6 technical support for development and implementation and fielded product management available. Should the Contractor

find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the CO of such nonconformance and act in accordance with instructions of the CO.

#### **H.49 COOPERATION WITH OTHER SITE CONTRACTORS**

- (a) The DOE has/or will have prime contracts or agreements in place with the following entities: Depleted Uranium Hexafluoride (DUF6) contractor, Infrastructure, Facilities Support Services contractor, United States Enrichment Cooperation (USEC), and other entities that provide support to the DOE Portsmouth/Paducah Project Office.
- (b) In the event that DOE awards other contracts or establishes agreements with additional entities whose work affects the contract, all terms and conditions of this provision apply to the Contractor's relationship with such entities.
- (c) In the performance of this operations project contract, the Contractor agrees to cooperate in a timely manner with DOE prime contractors and other entities. Cooperation includes, but is not limited to, the following types of activities: working together to resolve interface and work performance issues; establishing working groups; participating in meetings; providing access to applicable technical and contract information and data such as schedule and milestone data; discussing technical matters related to the Portsmouth & Paducah sites; providing access to contractor facilities or areas; and allowing observation of technical activities by appropriate personnel.
- (d) The Contractor is not authorized to direct any other DOE prime contractor or other entities, except as specified elsewhere in this contract or directed by the CO.
- (e) The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other DOE contractor or by Government employees. If DOE determines that the Contractor's activities may interfere with another DOE contractor, the CO shall provide instructions.

## **H.50 PERFORMANCE GUARANTEE AGREEMENT**

If the Contractor is a joint venture, limited liability company, other similar entity, or a newly formed entity, the Contractor's parent organization(s) or all member organizations shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the contract in Section J, Attachment J.12. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the CO.

## **H.51 RESPONSIBLE CORPORATE OFFICIAL**

The Contractor shall provide a Guarantee of performance from its parent company in the form set forth in the Section J Attachment entitled, Performance Guarantee Agreement. If the Contractor is a joint venture, newly-formed Limited Liability Company (LLC), or other similar entity where more than one company is involved in a business relationship created for the purpose of this procurement, the parent companies of all the entities forming the new entity shall each provide Guarantees for joint and severable liability for the performance of the Contractor. In the event any of the signatories to the Guarantee of performance enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer. Notwithstanding the provisions of this Clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the Contractor regarding contractor performance issues:

Name: **S. Robert Cochran, Jr.**

Position: **President**

Company/Organization: **Babcock and Wilcox technical Services Group, Inc.**

Address: **800 Main Street, Lynchburg, VA 24504**

Phone: **(434) 522-6806**

Facsimile: **(434) 522-5450**

Email: **[srcochran@babcock.com](mailto:srcochran@babcock.com)**

Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

## **H.52 ASSIGNMENT OF EXISTING AGREEMENTS AND SUBCONTRACTS**

- (a) The Contractor shall accept assignment of existing subcontracts and agreements identified by the CO. The Contractor may identify additional subcontracts and agreements for assumption, which it may negotiate directly with the parties involved. The agreements and subcontracts may include, but not be limited to, subcontracts and purchase orders; memorandums of agreement; memorandums of understanding; licenses; agreements with local and state governments; user agreements; and other similar agreements.
- (b) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE. DOE reserves the right to direct the Contractor to assign to DOE or another contractor any subcontract awarded under this contract. The Contractor agrees to accept assignment of subcontracts and agreements as determined necessary by DOE and listed below.

**Air Liquid Industrial U.S. LP**  
**Nov 22, 2006, Paducah, KY**  
**Purchase of Nitrogen - Assignment of Subcontract.**

**Air Liquid Industrial U.S. LP**  
**Nov 22, 2006, Portsmouth, OH**  
**Purchase of Nitrogen - Assignment of Subcontract**

**Solvay Fluorides**  
**June 1, 2006**  
**Sales Agreement No.UDS-SA-06-001,**  
**Purchase of HF 55% solution from Portsmouth and Paducah facilities.**

### **H.53 PAPERLESS DIRECTIVE PROCESSING SYSTEM**

- (a) The Contractor, in addition to complying with applicable laws, rules, and other regulations, shall comply with those DOE orders and other directives applicable to Contractors, with the applicable departmental policies, plans, programs, and management directives, and with all changes to assigned work as agreed to by the Contractor and the CO or designee.
- (b) DOE has developed an operating and administrative requirements “List of Applicable DOE Directives”, attached to the contract as Section J, Attachment J-2. The Contractor shall comply with the directives identified in such list. The Contractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of this contract, for additional costs, fee or extension of time of performance relating to compliance with the directives in such list.
- (c) The List of Applicable DOE Directives to the contract will be revised and issued, by the DOE CO, as a contract modification, as necessary. The CO may direct the

Contractor to comply with additional DOE directives and local directives and revisions thereto, as follows:

- (1) Pursuant to and in accordance with the Changes clause of the contract with respect to changes in directives within the general scope of this contract.
  - (2) Pursuant to any Environment, Safety, and Health provisions of this contract, and in accordance with the Changes clause of this contract with respect to changes in directives involving safety, environment, health, and quality.
- (d) At least once a month, the Contractor will extract directives from the DOE Paperless Directive System utilizing the Internet as notification of their availability by DOE electronic prompting. Copies of DOE directives may be obtained without charge from the CO or by citing the number of this contract in a written request sent to the following address:
- U.S. DOE  
Distribution Section  
Forrestal Building  
Washington, DC 20585
- (e) The CO and his/her representative(s) expressly authorized in writing to do so are the only Government officials authorized to provide explanations as to the applicability of directives. The CO is the only Government Official authorized to resolve possible conflicting requirements involving directives.
- (f) Upon receipt of a new or revised directive, the Contractor shall review it for consistency with the other terms of this contract and for impacts on funding, manpower and other provisions of the contract. If the Contractor considers the directive to be consistent with the other terms of this contract and it can be implemented within existing funds, manpower, and other provisions of the contract and the implementation will not have a negative impact on the cost, schedule, or other obligations of the Contractor, the Contractor shall establish an implementation schedule, and so advise the CO within 30 calendar days of receipt. In the event the Contractor considers the directive to be inconsistent with the other terms of this contract or the requirements of the directive cannot be implemented within existing funding, manpower, and other provisions of the contract, the Contractor shall so advise the CO within 30 calendar days of receipt. Such notice shall include the basis for the claimed inconsistency and the projected cost of implementation in excess of current funding, manpower, and other provisions of the contract. After evaluation of the Contractor's position, the CO shall issue direction to the Contractor, pursuant to the Changes clause, concerning appropriate implementation of the directive.
- (g) The Contractor will, at least quarterly, notify DOE of those directives obtained from the DOE Paperless Directive System as described in (d) above. The Contractor

cognizant personnel will review these directives and recommend for concurrence disposition of the directives to DOE-PPPO.

- (h) Upon agreement between the Contractor and DOE, the directive will be implemented as outlined in a Contractor Management Summary or Implementation Plan, whichever is appropriate, and the directive added to the Operating and Administrative Requirements List to the contract and issued by the CO. The same process will be utilized for deletion of directives.
- (i) The Contractor shall incorporate the substance of this clause with respect to applicable directives, excluding any reference to the Changes clause, in subcontracts for performance of work at the site and as directed by the CO.

#### **H.54 TRANSITION TO FOLLOW-ON CONTRACT**

- (a) The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

- (1) That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the successor contractor and the Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.
- (2) After selection by the Government of any successor contractor, the Contractor and such successor contractor shall jointly prepare mutual detailed plans for phase-out and phase-in operations. Such plans shall specify a training and orientation program for the successor contractor to cover each phase of the scope of work covered by the contract. A proposed date by which the successor contractor will assume responsibility for such work shall be established. The Contractor shall assume full responsibility for such work until assumption thereof by the successor contractor. Execution of the proposed plan or any part thereof shall be accomplished in accordance with the CO's direction and approval.

- (b) This clause shall apply to subcontracts as approved by the CO.

#### **H.55 PRIVACY ACT SYSTEM OF RECORDS**

The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to the Section I clause entitled, FAR 52.224-2, Privacy Act.

<u>System No.</u>	<u>Title</u>
DOE-5	Personnel Records of Former Contractor Employees
DOE-13	Payroll & Leave Records
DOE-14	Report of Compensation
DOE-15	Intelligence Related Access Authorization
DOE-23	Property Accountability System
DOE-28	General Training Records
DOE-31	Firearms Qualifications Requirements
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-43	Personnel Security Clearance File
DOE-51	Employee and Visitor Access Control Records
DOE-53	Access Authorization for ADP Equipment

#### **H.56 ADDITION AND ALTERATIONS TO IMPLEMENT EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT AND ITS IMPLEMENTING INSTRUCTIONS**

This contract involves contractor operation of Government-owned facilities and/or vehicles and the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or vehicles. Information on the requirements of the Executive Order and its Implementing Instructions may be found at [http://ofee.gov/eo/eo13423\\_main.asp](http://ofee.gov/eo/eo13423_main.asp). This requirement includes the Electronics Stewardship requirements of Implementing Instruction XII. When acquiring desktop or laptop computers and computer monitors, the Contractor shall acquire Electronic Product Environmental Assessment Tool registered products conforming to IEEE 1680-2006 Standard and ranked at least bronze, provided such products are life cycle cost efficient and meet applicable performance requirements. Information on EPEAT-registered computer products is available to [www.epeat.net](http://www.epeat.net).

#### **H.57 GOVERNMENT OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR CONTRACT TRANSITION PERIOD**

All real and personal property currently accountable to the incumbent contractor for contract performance will be provided to the Contractor. During the contract transition period, an inventory record of such property in the DOE Facilities Information Management System (FIMS) and current contractor's personal property databases will be provided to the Contractor. Specifically, the following property acceptance requirements will be implemented:

- (a) The Contractor must perform a joint wall-to-wall physical inventory with the current contractor(s) of all accountable high-risk and sensitive property during the transition period and accept full accountability for the high-risk property at the end of transition.
- (b) The Contractor must accept, at the end of transition, transfer of accountability for the remaining government-owned real and personal property not covered under paragraph (1), based on existing inventory records, on an “as-is, where-is” basis, or perform a wall-to-wall inventory within 120 calendar days of the effective date of the contract. Any discrepancies from the existing inventory records shall be reported to the CO. As the formal inventories are completed, the Contractor shall assume responsibility and liability for subsequent losses and damages. If the physical inventory is not accomplished within the allotted time frame, the previous Contractor's records will become the inventory baseline.

#### **H.58 CONTRACTOR’S ORGANIZATION**

- (a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see H.8 “Key Personnel”) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.
- (b) Supervisory representative of contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.
- (c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.
- (d) Standards and procedures. The Contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

#### **H.59 DISPOSITION OF INTELLECTUAL PROPERTY – FAILURE TO COMPLETE CONTRACT PERFORMANCE**

The following provisions shall apply in the event the Contractor does not complete contract performance for any reason:

- (a) The Government may take possession of and use all the technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operational manuals, flowcharts, software, databases and any other information necessary for of the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Section I clause entitled *DEAR 970.5227-1 Rights in Data- Facilities*. The Contractor shall ensure that its subcontractors and licensors make similar rights available to the Government and its contractors.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by the Contractor, and any other intellectual property, including technical data, which are owned or controlled by the Contractor, at any time through completion of this Contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at anytime from contesting the enforceability, validity or scope of, or title to, any rights or patents or other intellectual property herein licensed.
- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract..

#### **H.60 SMALL BUSINESS SUBCONTRACTING PLAN**

The Small Business Subcontracting Plan submitted by the Contractor in accordance with the clause in Section I entitled “Small Business Subcontracting Plan” and approved by the CO is incorporated into the contract in Section J, Attachment J-11. The CO shall approve any necessary changes to the plan.

#### **H.61 PARTNERING**

In order to most effectively accomplish this Contract, the Government proposes to form a cohesive partnership with the Contractor. It is a way of doing business based upon trust, dedication to common goals, and an understanding and respect

of each other's expectations and values. The process creates a teambuilding environment, which fosters better communication and problem solving, and a mutual trust between the participants. These key elements create a climate in which issues can be raised, openly discussed, and jointly settled, without getting into an adversarial relationship. In this way, partnering is a mindset, and a way of doing business. It is an attitude toward working as a team, and achieving successful project execution. This endeavor seeks an environment that nurtures team building cooperation, and trust between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

Participation in the partnership will be totally voluntary by the parties. Any cost associated with effectuating this partnership will be agreed to by both parties during Contract performance. The U.S. Army Corps of Engineers has championed partnering and their guidelines will be utilized in organizing partnering meetings and establishing a partnering agreement.

## **H.62 PERFORMANCE EVALUATION AND MEASUREMENT PLAN**

- (a) The determination of award fee earned shall be based upon a Performance Evaluation and Measurement Plan (PEMP), which includes the performance criteria for earning award fee and the distribution of award fee as provided in paragraph (d) below. The PEMP will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor with approval of the Contract Performance Baseline. Both the PEMP and the approved Contract Performance Baseline are hereby incorporated by reference.
- (b) Key aspects of the technical approach proposed by the Contractor and accepted by the Government are incorporated into Section H.63, Performance Requirements and will be included in the performance criteria in the PEMP. If the contractor fails to make progress towards successful execution or achievement of these key aspects of the technical approach, the Government may exercise any of its rights and remedies under the contract, including those contained in Section B.9 clause entitled, DEAR 952.223-76 Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (JAN 2004).
- (c) The PEMP will set forth the evaluation period(s) and the criteria upon which the Contractor will be evaluated. The Contractor may submit a self-evaluation of performance for each evaluation period. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, the self-evaluation which is to be received within 15 days after the end of the period being evaluated will be given such consideration as the FDO shall find appropriate.

- (d) The PEMP may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.
- (e) The Total Available Award Fee, identified in Section B.5, will be available to be earned over the term of the contract for the Contractor's performance against the criteria established in the PEMP.
- (f) The PEMP will identify the fee-bearing activities and establish the method of award fee determination.
- (g) Any unearned fee from the award fee made available for each evaluation period, Performance Based Incentive (PBI), or other incentive shall not be eligible to be earned under future periods, PBIs, or incentives.
- (h) While it is recognized that the basis for determination of the fee shall be the evaluation by the Government in accordance with this clause and the PEMP, the FDO may also consider any information available to him or her which relates to the Contractor's performance of contract requirements, regardless of whether or not those requirements are specifically identified. To the extent the Contractor does not perform those requirements; the FDO may reduce the fee determination. In the event that the Contractor's performance is considered unacceptable in any area of contract performance, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her sole discretion determine the Contractor's overall performance to be unacceptable, and accordingly may withhold the entire performance fee for the evaluation period.

**H.63 PERFORMANCE REQUIREMENTS**

- (a) Section C, Statement of Work specifies certain end state requirements which the Contractor is responsible to achieve. As part of its Technical Proposal, the Contractor has proposed (i) to exceed certain of these required end states and (ii) additional commitments. The contract end states and additional commitments proposed by the Contractor have been incorporated as contract performance requirements in paragraphs (b), (c), and (d) below as they relate to the basic contract period and the option periods, if exercised. In addition to these end states and additional commitments being performance requirements of the contract, these end states and additional commitments will also be a part of the performance criteria for earning award fee in accordance with the clause H.62, Performance Evaluation and Measurement Plan.
- (b) Basic Contract Period

<b>Performance Requirements</b>	<b>Total</b>
<b>Annual MT DUF6 Processed @ Paducah</b>	

<b>Year 1</b>	<b>4,000</b>
<b>Year 2</b>	<b>21,031</b>
<b>Year 3</b>	<b>21,929</b>
<b>Year 4</b>	<b>22,289</b>
<b>Year 5</b>	<b><u>22,828</u></b>
<b>Total</b>	<b><u>92,077</u></b>
<b>Annual MT DUF6 Processed @ Portsmouth</b>	
<b>Year 1</b>	
<b>Year 2</b>	<b>4,000</b>
<b>Year 3</b>	<b>15,795</b>
<b>Year 4</b>	<b>16,470</b>
<b>Year 5</b>	<b>16,740</b>
<b>Total</b>	<b><u>17,145</u></b>
	<b><u>70,150</u></b>

**PART II –CONTRACT CLAUSES**

**SECTION I**

**TABLE OF CONTENTS**

I.1	FAR 52.202-1 DEFINITIONS (JUL 2004) as modified by DEAR 952.202-1 (MAR 2002).....	I-8
I.2	FAR 52.203-3 GRATUITIES (APR 1984) .....	I-8
I.3	FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984) .....	I-9
I.4	FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006).....	I-9
I.5	FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995) .....	I-10
I.6	FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS .....	I-11
I.7	FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER.....	I-12
I.8	FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007) .....	I-13
I.9	FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008).....	I-18
I.10	FAR 52.203-14 DISPLAY OF HOTLINE POSTER (S) (DEC 2007).....	I-23
I.11	FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000) .....	I-24
I.12	FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008) .....	I-25
I.13	FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007).....	I-28
I.14	FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006) .....	I-29
I.15	FAR 52.215-2 AUDIT AND RECORDS – NEGOTIATION (MAR 2009).....	I-29
I.16	FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997).....	I-31
I.17	FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA- MODIFICATIONS (OCT 1997).....	I-31
I.18	FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997) .....	I-34

I.19	FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) .....	I-34
I.20	FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004).....	I-35
I.21	FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997).....	I-35
I.22	FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT (PRB) OTHER THAN PENSIONS (JUL 2005).....	I-36
I.23	FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) .....	I-36
I.24	FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA –MODIFICATIONS (OCT 1997).....	I-37
I.25	FAR 52.216-7 ALLOWABLE COST AND PAYMENT (DEC 2002).....	I-39
I.26	FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JULY 2005) .....	I-43
I.27	FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) ..	I-45
I.28	FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008), ALTERNATE II (OCT 2001).....	I-47
I.29	FAR 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999) .....	I-58
I.30	FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING (APR 2008) .....	I-59
I.31	FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007) .....	I-59
I.32	FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) .....	I-61
I.33	FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUM (JUL 1990) .....	I-61
I.34	FAR 52.222-3 CONVICT LABOR (JUN 2003) .....	I-62
I.35	FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT- OVERTIME COMPENSATION (JUL 2005) .....	I-63
I.36	FAR 52.222-6 DAVIS-BACON ACT (JULY 2005) .....	I-64
I.37	FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988).....	I-67
I.38	FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988).....	I-67
I.39	FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005).....	I-69
I.40	FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988).....	I-71
I.41	FAR 52.22211 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005) .....	I-71

I.42	FAR 52.222-12 CONTRACT TERMINATION – DEBARMENT (FEB 1988) .....	I-73
I.43	FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988).....	I-73
I.44	FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988).....	I-73
I.45	FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988).....	I-73
I.46	FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1998).....	I-73
I.47	FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) .....	I-74
I.48	FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007) .....	I-74
I.49	FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999).....	I-77
I.50	FAR 52.222-29 NOTIFICATION OF VISA DENIAL (JUNE 2003) .....	I-82
I.51	FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (SEPT 2006).....	I-83
I.52	FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998).....	I-87
I.53	FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006).....	I-89
I.54	FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004) .....	I-90
I.55	FAR 52.222-41 SERVICES CONTRACT ACT OF 1965 (NOV 2007) .....	I-92
I.56	FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989).....	I-101
I.57	FAR 52.222-50 COMBATING TRAFFICING IN PERSONS (FEB 2009).....	I-102
I.58	FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007) .....	I-104
I.59	FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), ALTERNATE I (JUL 1995).....	I-105
I.60	FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (AUG 2003) .....	I-106
I.61	FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001) .....	I-107
I.62	FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) .....	I-109
I.63	FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS. (MAY 2008).....	I-110
I.64	FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000) .....	I-111

I.65	FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001).....	I-111
I.66	FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995).....	I-112
I.67	FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003).....	I-112
I.68	FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007).....	I-113
I.69	FAR 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007).....	I-114
I.70	FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008).....	I-115
I.71	FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) .....	I-115
I.72	FAR 52.224-2 PRIVACY ACT (APR 1984) .....	I-115
I.73	FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (FEB 2009) .....	I-117
I.74	FAR 52.225-11 BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009).....	I-118
I.75	FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008).....	I-123
I.76	FAR 52.227-3 PATENT INDEMNITY (APR 1984).....	I-124
I.77	FAR 52.227-9 REFUND OF ROYALTIES (APR 1984).....	I-124
I.78	FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987) .....	I-125
I.79	FAR 52.228-7 INSURANCE-LIABILITY TO THIRD PERSONS (MAR 1996).....	I-125
I.80	FAR 52.230-2 COST ACCOUNTING STANDARDS (OCT 2008).....	I-127
I.81	FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008).....	I-129
I.82	FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984) .....	I-139
I.83	FAR 52.232-17 INTEREST (OCT 2008).....	I-139
I.84	FAR 52.232-22 LIMITATION OF FUNDS (APR 1984) .....	I-140
I.85	FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) .....	I-143
I.86	FAR 52.232-25 PROMPT PAYMENT (OCT 2008) -- ALTERNATE I (FEB 2002).....	I-143
I.87	FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION (OCT 2003).....	I-149
I.88	FAR 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991).....	I-152
I.89	FAR 52.233-2 SERVICE OF PROTEST (SEPT 2006) AS MODIFIED BY DEAR 952.233-2 .....	I-153
I.90	FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996).....	I-154

I.91	FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004) .....	I-155
I.92	FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984).....	I-155
I.93	FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991).....	I-155
I.94	FAR 52.237-11 ACCEPTING AND DISPENSING OF \$1 COIN (SEPT 2008) .....	I-156
I.95	FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996) .....	I-156
I.96	FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) .....	I-157
I.97	FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001) .....	I-157
I.98	FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997) .....	I-158
I.99	FAR 52.242-13 BANKRUPTCY (JUL 1995).....	I-159
I.100	FAR 52.243-2 CHANGES- COST REIMBURSEMENT, ALTERNATE I (AUG 1987) .....	I-159
I.101	FAR 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984) .....	I-160
I.102	FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984).....	I-160
I.103	FAR 52.244-2 SUBCONTRACTS (JUNE 2007) ALTERNATE I (JUNE 2007) .....	I-163
I.104	FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) .....	I-166
I.105	FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2009) .....	I-166
I.106	FAR 52.245-1 GOVERNMENT PROPERTY (JUNE 2007) .....	I-167
I.107	FAR 52.245-9 USE AND CHARGES (JUNE 2007) .....	I-183
I.108	FAR 52.246-25 LIMITATION OF LIABILITY – SERVICES (FEB 1997) .....	I-186
I.109	FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006) .....	I-187
I.110	FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006).....	I-188
I.111	FAR 52.248-1 VALUE ENGINEERING (FEB 2000).....	I-188
I.112	FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004).....	I-196
I.113	FAR 52.249-14 EXCUSABLE DELAYS (APR 1984).....	I-200
I.114	FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984) .....	I-201
I.115	FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991) .....	I-201
I.116	FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984).....	I-201
I.117	FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991) .....	I-202
I.118	DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000) .....	I-202

I.119	DEAR 952.204-2 SECURITY (JUNE 2009) .....	I-202
I.120	DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000) .....	I-207
I.121	DEAR 952.204-77 COMPUTER SECURITY (AUG 2006).....	I-208
I.122	DEAR 952.208-70 PRINTING (APR 1984) .....	I-209
I.123	DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997).....	I-209
I.124	DEAR 952.223-71 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH TO WORK PLANNING AND EXECUTION (DEC 2000) .....	I-212
I.125	DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984).....	I-215
I.126	DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994) .....	I-215
I.127	DEAR 952.226-74 DISPLACED EMPLOYEES HIRING PREFERENCE (JUN 1997).....	I-215
I.128	DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994) .....	I-216
I.129	DEAR 952.231-71 INSURANCE – LITIGATION AND CLAIMS (APR 2002) .....	I-216
I.130	DEAR 952.233-5 AGENCY PROTEST REVIEW (SEP 1996) .....	I-219
I.131	DEAR 952.247-70 FOREIGN TRAVEL (DEC 2000).....	I-219
I.132	DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996).....	I-219
I.133	DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNT (DEC 2000).....	I-223
I.134	DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006).....	I-224
I.135	DEAR 970.5204-2 LAWS, REGULATIONS AND DOE DIRECTIVES (DEC 2000).....	I-225
I.136	DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)...	I-226
I.137	DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008).....	I-228
I.138	DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000) .....	I-230
I.139	DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000).....	I-230
I.140	DEAR 970.5226- 3 COMMUNITY COMMITMENT (DEC 2000).....	I-231
I.141	DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000) .....	I-231
I.142	DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) .....	I-237

I.143	DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002) .....	I-238
I.144	DEAR 970.5227-6 PATENT INDEMNITY-SUBCONTRACTS (DEC 2000).....	I-238
I.145	DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002).....	I-239
I.146	DEAR 970.5227-10 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002) .....	I-240
I.147	DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000).....	I-253
I.148	DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000) .....	I-261
I.149	DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000).....	I-262

**SECTION I**

**CONTRACT CLAUSES**

**I.1 FAR 52.202-1 DEFINITIONS (JUL 2004) as modified by DEAR 952.202-1 (MAR 2002)**

- (a) *Head of Agency* means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

**I.2 FAR 52.203-3 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—
  - (1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—
  - (1) To pursue the same remedies as in a breach of the contract; and
  - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**I.3 FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

**I.4 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)**

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

**I.5 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

(a) *Definitions.*

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or

- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c)
  - (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
  - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
  - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
  - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
  - (5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

**I.6 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may—
  - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
  - (2) Rescind the contract with respect to which—

- (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either—
    - (A) Exchanging the information covered by such subsections for anything of value; or
    - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
  - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
  - (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**I.7 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be—
  - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;
  - (3) For cost-plus-award-fee contracts—
    - (i) The base fee established in the contract at the time of contract award;

- (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
- (4) For fixed-price-incentive contracts, the Government may—
  - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
  - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**I.8 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)**

- (a) *Definitions.* As used in this clause—
  - “Agency” means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

“Covered Federal action” means any of the following actions:

- (1) Awarding any Federal contract.

- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to

expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Reasonable compensation” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and *are* permitted by other Federal law.

“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

- (b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

- (1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal,

or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.*

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.*

- (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
  - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.
- (g) *Subcontracts.*
- (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.
  - (2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
  - (3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

**I.9 FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)**

- (a) *Definitions.* As used in this clause—
- “Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.
- “Full cooperation”—
- (1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and

complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.*

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

- (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
- (3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—
- (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
  - (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- (ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.
- (iii) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.
- (c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:
- (1) An ongoing business ethics awareness and compliance program.

- (i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
- (ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

- (i) The Contractor's internal control system shall—
  - (A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and
  - (B) Ensure corrective measures are promptly instituted and carried out.
- (ii) At a minimum, the Contractor's internal control system shall provide for the following:
  - (A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.
  - (B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.
  - (C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—
    - (1) Monitoring and auditing to detect criminal conduct;
    - (2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal

control system, especially if criminal conduct has been detected; and

- (3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.
- (D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
- (E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
- (F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).
  - (1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.
  - (2) If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.
  - (3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

**I.10 FAR 52.203-14 DISPLAY OF HOTLINE POSTER (S) (DEC 2007)**

(a) *Definition.*

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

<i>Poster(s)</i>	<i>Obtain from</i>
_____	_____
_____	_____

(Contracting Officer shall insert—

- (i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and
  - (ii) The website(s) or other contact information for obtaining the poster(s).)
- (c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.
- (d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—
- (1) Is for the acquisition of a commercial item; or
  - (2) Is performed entirely outside the United States.

**I.11 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**

(a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as—
  - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
  - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

**I.12 FAR 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008)**

- (a) Definitions. As used in this clause—

“Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

“Registered in the CCR database” means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
  - (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.
- (b)
- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
  - (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
- (1) An offeror may obtain a DUNS number—
    - (i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
    - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a

U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

- (i) Company legal business.
  - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
  - (iii) Company Physical Street Address, City, State, and ZIP Code.
  - (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
  - (v) Company Telephone Number.
  - (vi) Date the company was started.
  - (vii) Number of employees at your location.
  - (viii) Chief executive officer/key manager.
  - (ix) Line of business (industry).
  - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
- (g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or

has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

**I.13 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)**

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

**I.14 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)**

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
  - (1) The name of the subcontractor.
  - (2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
  - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
  - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**I.15 FAR 52.215-2 AUDIT AND RECORDS – NEGOTIATION (MAR 2009)**

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This

right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

- (c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—
- (1) The proposal for the contract, subcontract, or modification;
  - (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the contract, subcontract, or modification; or
  - (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General—
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
  - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—
- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
  - (2) The data reported.
- (f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for

any longer period required by statute or by other clauses of this contract. In addition—

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
  - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  - (2) For which cost or pricing data are required; or
  - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

**I.16 FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

**I.17 FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA- MODIFICATIONS (OCT 1997)**

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
  - (1) The actual subcontract; or
  - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
  - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—
- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
  - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
  - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
  - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**I.18 FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997)**

- (a) The requirements of paragraphs (b) and (c) of this clause shall—
  - (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
  - (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.
- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

**I.19 FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997)**

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

- (c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

**I.20 FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)**

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—
  - (1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and
  - (2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.
- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.
- (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

**I.21 FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)**

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

**I.22 FAR 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT (PRB) OTHER THAN PENSIONS (JUL 2005)**

- (a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.
- (b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.
- (c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

**I.23 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

- (a) The Contractor shall make the following notifications in writing:
  - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
  - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall—
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide the ACO or designated representative ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

**I.24 FAR 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA –MODIFICATIONS (OCT 1997)**

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If—

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or

subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

- (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

**I.25 FAR 52.216-7 ALLOWABLE COST AND PAYMENT (DEC 2002)  
MODIFIED BY DEAR 952.216-7, ALTERNATE II**

(a) Invoicing.

- (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) “as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR),” Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.
- (2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.
- (3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only—
  - (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

- (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—
    - (A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—
      - (1) In accordance with the terms and conditions of a subcontract or invoice; and
      - (2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;
    - (B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;
    - (C) Direct labor;
    - (D) Direct travel;
    - (E) Other direct in-house costs; and
    - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
  - (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.
- (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—
    - (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
    - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).
  - (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

- (4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.
- (d) Final indirect cost rates.
  - (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
  - (2)
    - (i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
    - (ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
  - (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
  - (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
  - (5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

- (6) (i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—
  - (A) Determine the amounts due to the Contractor under the contract; and
  - (B) Record this determination in a unilateral modification to the contract.
- (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.
- (e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—
  - (1) Shall be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—
  - (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
  - (2) Adjusted for prior overpayments or underpayments.
- (h) *Final payment.*
  - (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
  - (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been

reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

- (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
- (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—
  - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
  - (B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
  - (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

**I.26 FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JULY 2005)**

- (a) *Definition.* “HUBZone small business concern,” as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- (b) Evaluation preference.
  - (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

- (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and
  - (ii) Otherwise successful offers from small business concerns.
- (2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.
  - (3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.
- (c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

\_\_\_\_ Offeror elects to waive the evaluation preference.

- (d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—
- (1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;
  - (2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;
  - (3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or
  - (4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

- (e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.
- (f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

**I.27 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) *Definitions.* As used in this contract—

“*HUBZone small business concern*” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“*Service-disabled veteran-owned small business concern*”—

(1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“*Small business concern*” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“*Small disadvantaged business concern*” means a small business concern that represents, as part of its offer that—

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“*Veteran-owned small business concern*” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“*Women-owned small business concern*” means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

- (2) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

**I.28 FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008),  
ALTERNATE II (OCT 2001)**

- (a) This clause does not apply to small business concerns.
- (b) *Definitions.* As used in this clause—

“*Alaska Native Corporation (ANC)*” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“*Commercial item*” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“*Commercial plan*” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“*Electronic Subcontracting Reporting System (eSRS)*” means the Government-wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“*Indian tribe*” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“*Individual contract plan*” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals

that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

*"Master plan"* means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

*"Subcontract"* means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian

tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

- (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
- (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
- (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
- (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;

- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
  - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
- (i) Small business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns; and
  - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
- (i) Small business concerns (including ANC and Indian tribes);

- (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
  - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will—
- (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
  - (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority

Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

- (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
  - (v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and
  - (vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—
    - (A) Whether small business concerns were solicited and, if not, why not;
    - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;

- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
  - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
  - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
  - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
  - (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact—
- (A) Trade associations;
  - (B) Business development organizations;
  - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
  - (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
- (A) Workshops, seminars, training, etc.; and
  - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged

business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
  - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—
- (1) The master plan has been approved;
  - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
  - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's

- planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
  - (i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.
  - (j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.
  - (k) The failure of the Contractor or subcontractor to comply in good faith with—
    - (1) The clause of this contract entitled “Utilization Of Small Business Concerns;”  
or
    - (2) An approved plan required by this clause, shall be a material breach of the contract.
  - (l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.
    - (1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be

submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

- (i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.
- (ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts

awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

- (D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.
- (E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.
- (F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

- (A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.
- (B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.
- (C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.
- (D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a

commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

**I.29 FAR 52.219-16 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (JAN 1999)**

- (a) “Failure to make a good faith effort to comply with the subcontracting plan,” as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled “Small Business Subcontracting Plan,” the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**I.30 FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING (APR 2008)**

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.
- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

**I.31 FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007)**

- (a) *Definitions.* As used in this clause—

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

- (b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:
- (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
  - (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
  - (3) For long-term contracts—
    - (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
    - (ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.
- (c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardstopics/>.
- (d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.
- (e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.
- (f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.
- (g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract,

the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it \_\_\_ is, \_\_\_ is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_.  
***[Contractor to sign and date and insert authorized signer's name and title].***

**I.32 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

**I.33 FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUM (JUL 1990)**

- (a) The use of overtime is authorized under this contract if the overtime premium does not exceed \* \_\_\_\_\_ **determined on a case by case basis** \_\_\_\_\_ or the overtime premium is paid for work—
- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
  - (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
  - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
  - (4) That will result in lower overall costs to the Government.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—
- (1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
  - (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

**I.34 FAR 52.222-3 CONVICT LABOR (JUN 2003)**

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons—
  - (1) On parole or probation to work at paid employment during the term of their sentence;
  - (2) Who have been pardoned or who have served their terms; or
  - (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
    - (i) The worker is paid or is in an approved work training program on a voluntary basis;
    - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
    - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
    - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
    - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**I.35 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-  
OVERTIME COMPENSATION (JUL 2005)**

- (a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) Payrolls and basic records.
- (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- (e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a)

through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

**I.36 FAR 52.222-6 DAVIS-BACON ACT (JULY 2005)**

(a) Definition.—“Site of the work”—

(1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

- (b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.
- (c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed

under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the

Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**I.37 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**I.38 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall

maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional [Form WH-347](#) (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the—

Superintendent of Documents  
U.S. Government Printing Office  
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
  - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](#) shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (b)(2) of this clause.
- (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under

Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**I.39 FAR 52.222-9 APPRENTICES AND TRAINEES (JULY 2005)**

(a) Apprentices.

- (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—
- (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
  - (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
- (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- (4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
- (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
- (2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work

actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

- (3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**I.40 FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

**I.41 FAR 52.22211 SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)**

(a) *Definition.* “Construction, alteration or repair,” as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
- (2) Painting and decorating;
- (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
- (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at [52.222-6](#), Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and
- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR

clause at [52.222-6](#), Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at [52.222-6](#), in the “site of the work” definition).

- (b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
- (1) Davis-Bacon Act;
  - (2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);
  - (3) Apprentices and Trainees;
  - (4) Payrolls and Basic Records;
  - (5) Compliance with Copeland Act Requirements;
  - (6) Withholding of Funds;
  - (7) Subcontracts (Labor Standards);
  - (8) Contract Termination—Debarment;
  - (9) Disputes Concerning Labor Standards;
  - (10) Compliance with Davis-Bacon and Related Act Regulations; and
  - (11) Certification of Eligibility.
- (c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d)
- (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed [Standard Form \(SF\) 1413](#), Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
  - (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed [SF 1413](#) for such additional subcontract.

- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

**I.42 FAR 52.222-12 CONTRACT TERMINATION – DEBARMENT (FEB 1988)**

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

**I.43 FAR 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

**I.44 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**I.45 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)**

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

**I.46 FAR 52.222-16 APPROVAL OF WAGE RATES (FEB 1998)**

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this

purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

**I.47 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**I.48 FAR 52.222-26 EQUAL OPPORTUNITY (MAR 2007)**

- (a) *Definition.*

"United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

- (b)
  - (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
  - (2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the

employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

- (c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
- (i) Employment;
  - (ii) Upgrading;
  - (iii) Demotion;
  - (iv) Transfer;
  - (v) Recruitment or recruitment advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and
  - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

- (d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**I.49 FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**

(a) *Definitions.*

“Covered area,” as used in this clause, means the geographical area described in the solicitation for this contract.

“Deputy Assistant Secretary,” as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

“Employer identification number,” as used in this clause, means the Federal Social Security number used on the employer’s quarterly Federal tax return, U.S. Treasury Department Form 941.

“Minority,” as used in this clause, means—

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
  - (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  - (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
  - (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an

approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

- (d) The Contractor shall implement the affirmative action procedures in paragraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
  - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
  - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment

sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
- (4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under paragraph (g)(2) of this clause.
- (6) Disseminate the Contractor's equal employment policy by—
  - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
  - (ii) Including the policy in any policy manual and in collective bargaining agreements;
  - (ii) Publicizing the policy in the company newspaper, annual report, etc.;
  - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
  - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions.

Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under paragraphs (g)(1) through (16) of this clause, provided, the Contractor—
  - (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

- (m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
- (n) The Contractor shall designate a responsible official to—
  - (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
  - (2) Submit reports as may be required by the Government; and
  - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**I.50 FAR 52.222-29 NOTIFICATION OF VISA DENIAL (JUNE 2003)**

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

**I.51 FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (SEPT 2006)**

(a) *Definitions.* As used in this clause—

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
  - (i) Rated at 30 percent or more; or
  - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran’s ability to prepare for, obtain, or retain employment consistent with the veteran’s abilities, aptitudes, and interests); or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who—

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
    - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
    - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
  - (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—
    - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
    - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.
- (b) General.
- (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant

for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

- (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings.

- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job

Bank shall satisfy the requirement to list jobs with the local employment service office.

- (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings.

- (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall—
  - (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
  - (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.
- (3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may

lower the posted notice so that it can be read by a person in a wheelchair).

- (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.
- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

**I.52 FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) Postings.
- (1) The Contractor agrees to post employment notices stating—
- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
  - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every

subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**I.53 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)**

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
  - (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
  - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
  - (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.
- (b) The Contractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans’ Employment Report (VETS-100 Report).”
- (c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—
  - (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
  - (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

- (1) The information is voluntarily provided;
  - (2) The information will be kept confidential;
  - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
  - (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**I.54 FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**

- (a) *Definition.* As used in this clause—

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

- (b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

- (c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.
- (d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.
- (e) The requirement to post the employee notice in paragraph (b) does not apply to—
  - (1) Contractors and subcontractors that employ fewer than 15 persons;
  - (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
  - (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
  - (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—
    - (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

- (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
- (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.
- (f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—
  - (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
  - (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or
  - (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.
- (g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**I.55 FAR 52.222-41 SERVICES CONTRACT ACT OF 1965 (NOV 2007)**

- (a) *Definitions.* As used in this clause—

“Act” means the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

“Contractor,” when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee” means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- (b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.
- (c) Compensation.
  - (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.
  - (2)
    - (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
    - (ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together

with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

- (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
- (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
- (B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the

performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
  - (v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
  - (vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- (f) *Successor contracts.* If this contract succeeds a contract subject to the Act under

which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the

control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds

until the violation ceases.

- (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) *Seniority list.* Not less than 10 days prior to completion of any contract being

performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

- (o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) Contractor's certification.
  - (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
  - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
  - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
  - (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

- (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).
  - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.
- (r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—
- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**I.56 FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:  
It is not a Wage Determination*

<u>Equivalent Rates</u>	<u>Grades</u>	<u>Salary</u>	
		<b>Paducah</b>	<b>Piketon</b>
Accounting Clerk III	GS-5	14.24	14.24
Administrative Assistance	GS-7	17.64	17.64
Document Preparation Clerk	GS-3	11.34	11.34
General Clerk III	GS-4	12.73	12.73
Order Clerk II	GS-3	11.34	11.34
Personnel Assistant (Employment)III	GS-6	15.88	15.88
Technical Instructor	GS-7	17.64	17.64
Technical Instructor /Course Developer	GS-9	21.58	21.58
Material Coordinator	WG-7	18.58	19.16
Shipping/Receiving Clerk	WG-4	15.20	15.24
Truck Driver, Light	WG-6	17.50	17.84
Truck Driver, Medium	WG-7	18.58	19.16
Truck Driver, Heavy	WG-8	19.79	20.44
Electrician, Maintenance	WG 10	21.91	22.82
General Maintenance Worker	WG-8	19.79	20.44
Instrument Mechanic	WG-10	21.91	22.82
Laborer	WG-2	12.55	12.63

**I.57 FAR 52.222-50 COMBATING TRAFFICING IN PERSONS (FEB 2009)**

(a) *Definitions.* As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;  
or
- (3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

- (1) Notify its employees of—
  - (i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
  - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—

- (1) Required removal of a Contractor employee or employees from the performance of the contract;
- (2) Required subcontractor termination;

- (3) Suspension of contract payments;
  - (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
  - (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
  - (6) Suspension or debarment.
- (f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

**I.58 FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007)**

- (a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—
- (1) The product cannot be acquired—
    - (i) Competitively within a time frame providing for compliance with the contract performance schedule;
    - (ii) Meeting contract performance requirements; or
    - (iii) At a reasonable price.
  - (2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 2902.10 *et seq.*). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:
    - (i) Spacecraft system and launch support equipment.
    - (ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.
- (b) Information about this requirement and these products is available at: <http://www.usda.gov/biopreferred>.

**I.59 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), ALTERNATE I (JUL 1995)**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The Offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.
<u>Aqueous Hydrogen Fluoride</u>	<u>CAS# 7664-39-3</u>
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful Offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Offeror being considered non-responsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to

hazardous material are as follows:

- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h) (1) of this clause, in precedence over any other clause of this contract providing for rights in data.
  - (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
  - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**I.60 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (AUG 2003)**

(a) *Definitions.* As used in this clause—

“Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through

Leadership in Environmental Management.

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
  - (1) The emergency planning reporting requirements of Section 302 of EPCRA.
  - (2) The emergency notice requirements of Section 304 of EPCRA.
  - (3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
  - (4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
  - (5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
  - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

**I.61 FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

(a) *Definitions.* As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor

are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
  - (2) Establish an ongoing drug-free awareness program to inform such employees about—
    - (i) The dangers of drug abuse in the workplace;
    - (ii) The Contractor’s policy of maintaining a drug-free workplace;
    - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
  - (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

**I.62 FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)**

- (a) The Contractor shall notify the Contracting Officer or designee, in writing, \_\_\_\_\_\* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the *Code of Federal Regulations*, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

\* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

- (b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—
- (1) Be submitted in writing;
  - (2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
  - (3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.
- (c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.
- (d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

**I.63 FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS. (MAY 2008)**

- (a) *Definitions.* As used in this clause—
- “Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”
- “Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- (b) The Contractor, on completion of this contract, shall—
- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

- (2) Submit this estimate to \_\_\_\_\_ [*Contracting Officer complete in accordance with agency procedures*].

**I.64 FAR 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)**

- (a) *Definitions.* As used in this clause—

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

- (b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR Part 247).

**I.65 FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)**

- (a) *Definition.* “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) \*\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

**I.66 FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS  
(MAY 1995)**

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

**I.67 FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—
- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
  - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
  - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
  - (4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
    - (i) Major group code 10 (except 1011, 1081, and 1094).
    - (ii) Major group code 12 (except 1241).
    - (iii) Major group codes 20 through 39.
    - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

- (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—
  - (1) The Contractor shall notify the Contracting Officer; and
  - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—
    - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
    - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—
  - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
  - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**I.68 FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)**

- (a) *Definition.* As used in this clause—
  - “Energy-efficient product”—
    - (1) Means a product that—

- (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
  - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
- (2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).
- (b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—
- (1) Delivered;
  - (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
  - (3) Furnished by the Contractor for use by the Government; or
  - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
- (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
  - (2) Otherwise approved in writing by the Contracting Officer.
- (d) Information about these products is available for—
- (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
  - (2) FEMP at [http://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

**I.69 FAR 52.223-16 IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)**

- (a) *Definitions.* As used in this clause—

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“Notebook computer” means a portable-style or laptop-style computer system.

“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see [www.epeat.net](http://www.epeat.net).

**I.70 FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)**

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

**I.71 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

**I.72 FAR 52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor agrees to—

- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—
    - (i) The systems of records; and
    - (ii) The design, development, or operation work that the contractor is to perform;
  - (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
  - (3) Include this clause, including this paragraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.
- (b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.
- (c)
- (1) “Operation of a system of records,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
  - (2) “Record,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
  - (3) “System of records on individuals,” as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**I.73 FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (FEB 2009)**

(a) *Definitions.* As used in this clause—

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“United States” means the 50 States, the District of Columbia, and outlying areas.

- (b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

**I.74 FAR 52.225-11 BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)**

(a) *Definitions.* As used in this clause—  
“Caribbean Basin country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country;  
or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ( 46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material

regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
  - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
  - (ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated county construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

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*[Contracting Officer to list applicable excepted materials or indicate "none"]*

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

- (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
- (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
- (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—
    - (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Price;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

**I.75 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's

regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**I.76 FAR 52.227-3 PATENT INDEMNITY (APR 1984)**

- (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—
- (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
  - (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
  - (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**I.77 FAR 52.227-9 REFUND OF ROYALTIES (APR 1984)**

- (a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.
- (b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

- (c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.
- (d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.
- (e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**I.78 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)**

Except for data contained on pages none, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal dated October 4, 2010, upon which this contract is based.

**I.79 FAR 52.228-7 INSURANCE-LIABILITY TO THIRD PERSONS (MAR 1996)**

- (a)
  - (1) Except as provided in paragraph (a)(2) of this clause, the Contractor shall provide and maintain workers’ compensation, employer’s liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.
  - (2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers’ compensation, the Contractor is qualified pursuant to statutory authority.
  - (3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

- (b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.
- (c) The Contractor shall be reimbursed—
  - (1) For that portion—
    - (i) Of the reasonable cost of insurance allocable to this contract; and
    - (ii) Required or approved under this clause; and
  - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—
    - (i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
    - (ii) Death or bodily injury.
- (d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—
  - (1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;
  - (2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or
  - (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

- (i) All or substantially all of the Contractor's business;
  - (ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
  - (iii) A separate and complete major industrial operation in connection with the performance of this contract.
- (f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.
- (g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—
- (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
  - (3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

**I.80 FAR 52.230-2 COST ACCOUNTING STANDARDS (OCT 2008)**

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
- (1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards

(CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

- (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
  - (i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.
  - (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United

States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$650,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**I.81 FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS  
(MAR 2008)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

- (a) *Definitions.* As used in this clause—

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

- (1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or
- (2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

- (1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;
- (2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);
- (3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and
- (4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

“Flexibly-priced contracts and subcontracts” means—

- (1) Fixed-price contracts and subcontracts described at FAR 16.203-1(a)(2), 16.204, 16.205, and 16.206;
- (2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);
- (3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);
- (4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and
- (5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

- (1) Comply with applicable CAS; or
- (2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

- (1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or
- (2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

- (b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

- (1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.
- (2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

- (3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.
  - (4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)—
    - (i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or
    - (ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.
- (c) When requested by the CFAO, submit on or before a date specified by the CFAO—
- (1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;
  - (2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;
  - (3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and
  - (4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.
- (d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—
- (1) Calculate the cost impact in accordance with paragraph (f) of this clause;
  - (2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

- (i) A representative sample of affected CAS-covered contracts and subcontracts.
  - (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:
    - (A) Fixed-price contracts and subcontracts.
    - (B) Flexibly-priced contracts and subcontracts.
  - (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;
- (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
- (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
    - (A) Fixed-price contracts and subcontracts.
    - (B) Flexibly-priced contracts and subcontracts.
  - (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:
    - (A) Fixed-price contracts and subcontracts.
    - (B) Flexibly-priced contracts and subcontracts; and
- (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—
- (1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;
  - (2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

- (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and
    - (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;
  - (3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and
  - (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:
- (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).
  - (2) For unilateral changes—
    - (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
      - (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
      - (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
    - (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
      - (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

- (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
  - (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and
  - (iv) Calculate the increased cost to the Government in the aggregate.
- (3) For equitable adjustments for required or desirable changes—
- (i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and
  - (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.
- (g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:
- (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
  - (2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:
    - (i) A representative sample of affected CAS-covered contracts and subcontracts.
    - (ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.
    - (iii) Any other method that provides a reasonable approximation of the total increase or decrease.
  - (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

- (i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
    - (A) Fixed-price contracts and subcontracts.
    - (B) Flexibly-priced contracts and subcontracts.
  - (ii) The increased or decreased cost to the Government for each of the following groups:
    - (A) Fixed-price contracts and subcontracts.
    - (B) Flexibly-priced contracts and subcontracts.
  - (iii) The total overpayments and underpayments made by the Government during the period of noncompliance.
- (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:
- (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
  - (2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—
    - (i) Include only those affected CAS-covered contracts and subcontracts having—
      - (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and
      - (B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and
    - (ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.
  - (3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

- (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:
    - (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).
    - (2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:
      - (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.
      - (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.
    - (3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
      - (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.
      - (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.
    - (4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated

incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

- (5) Calculate the increased cost to the Government in the aggregate.
- (j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:
  - (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.
  - (2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.
- (k) Agree to—
  - (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3; and
  - (2) Repay the Government for any aggregate increased cost paid to the Contractor.
- (l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—
  - (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);
  - (2) Include the substance of this clause in all negotiated subcontracts; and
  - (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:
    - (i) Subcontractor's name and subcontract number.
    - (ii) Dollar amount and date of award.
    - (iii) Name of Contractor making the award.
- (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

- (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
- (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.
- (n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

**I.82 FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)**

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to—

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

**I.83 FAR 52.232-17 INTEREST (OCT 2008)**

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
- (c) *Final Decisions*. The Contracting Officer will issue a final decision as required by 33.211 if—

- (1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
  - (2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
  - (3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
- (d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
- (e) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- (f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
- (1) The date on which the designated office receives payment from the Contractor;
  - (2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
  - (3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
- (g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.84 FAR 52.232-22 LIMITATION OF FUNDS (APR 1984)**

- (a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified

- in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.
- (b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.
  - (c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.
  - (d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
  - (e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.
  - (f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—
    - (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

- (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of—
- (i) The amount then allotted to the contract by the Government or;
  - (ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.
- (g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- (h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.
- (i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of—
- (1) The amount previously allotted by the Government or;
  - (2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- (j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

- (l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

**I.85 FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

**I.86 FAR 52.232-25 PROMPT PAYMENT (OCT 2008) -- ALTERNATE I (FEB 2002)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

(1) Due date.

- (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

- (A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

- (B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.
- (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments.

- (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—
  - (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.
  - (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.
  - (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
  - (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this

classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.*, 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (*e.g.*, evidence of shipment).

(4) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(7) Additional interest penalty.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

- (C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.
  - (ii) (A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—
    - (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
    - (2) Attach a copy of the invoice on which the unpaid late payment interest is due; and
    - (3) State that payment of the principal has been received, including the date of receipt.
  - (B) If there is no postmark or the postmark is illegible—
    - (1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or
    - (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.
  - (iii) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.*, payments under utility contracts subject to tariffs and regulation).
- (b) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.
- (c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

- (d) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
- (1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
    - (i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
    - (ii) Affected contract number and delivery order number if applicable;
    - (iii) Affected contract line item or subline item, if applicable; and
    - (iv) Contractor point of contact.
  - (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (e) *Invoices for interim payments*. For interim payments under this cost-reimbursement contract for services—
- (1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;
  - (2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and
  - (3) The contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

**I.87 FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

- (a) Method of payment.
- (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.
  - (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

- (i) Accept payment by check or some other mutually agreeable method of payment; or
  - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).
- (b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.
- (c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- (d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (e) Liability for uncompleted or erroneous transfers.
  - (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—
    - (i) Making a correct payment;
    - (ii) Paying any prompt payment penalty due; and
    - (iii) Recovering any erroneously directed funds.
  - (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
  - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

**I.88 FAR 52.233-1 DISPUTES (JUL 2002) ALTERNATE I (DEC 1991)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)
  - (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
  - (2)
    - (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
    - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
    - (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
  - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within

- 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
  - (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
  - (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
  - (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**I.89 FAR 52.233-2 SERVICE OF PROTEST (SEPT 2006) AS MODIFIED BY DEAR 952.233-2**

- (a) Protests, as defined in section 31.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from **The U.S. Department of Energy, 250 E, 5<sup>th</sup> Street, Suite 500, Cincinnati, Ohio 45202, Attn: Irma Brown .**
- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.
- (c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

**I.90 FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
- (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the

Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I.91 FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

**I.92 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**I.93 FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to—
- (1) Furnish phase-in training; and
  - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and

allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**I.94 FAR 52.237-11 ACCEPTING AND DISPENSING OF \$1 COIN (SEPT 2008)**

- (a) This clause applies to service contracts that involve business operations conducted in U.S. coin and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. All such business operations must be compliant with the requirements in paragraphs (b) and (c) of this clause on and after January 1, 2008.
- (b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of—
  - (1) Accepting \$1 coins in connection with such operations; and
  - (2) Dispensing \$1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than \$1.
- (c) The Contractor shall ensure that signs and notices are displayed denoting the capability of accepting and dispensing \$1 coins with business operations on all premises where coins or currency are accepted or dispensed, including on each vending machine.

**I.95 FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)**

- (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

**I.96 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**

- (a) Notwithstanding any other clause of this contract—
- (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and
  - (2) The Contractor may, after receiving a notice under paragraph (a)(1) of this clause, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

**I.97 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)**

- (a) *Definition.* "Proposal," as used in this clause, means either—
- (1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—
    - (i) Relates to any payment made on the basis of billing rates; or
    - (ii) Will be used in negotiating the final contract price; or
  - (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).
- (c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

- (1) The amount of the disallowed cost allocated to this contract; plus
- (2) Simple interest, to be computed—
  - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
  - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).
- (g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

**I.98 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)**

- (a) The Contractor shall—
  - (1) Certify any proposal to establish or modify final indirect cost rates;
  - (2) Use the format in paragraph (c) of this clause to certify; and
  - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- (c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**I.99 FAR 52.242-13 BANKRUPTCY (JUL 1995)**

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of government contract numbers and contracting offices for all government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**I.100 FAR 52.243-2 CHANGES- COST REIMBURSEMENT, ALTERNATE I (AUG 1987)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the—

- (1) Estimated cost, delivery or completion schedule, or both;
  - (2) Amount of any fixed fee; and
  - (3) Other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

**I.101 FAR 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984)**

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

**I.102 FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984)**

- (a) Definitions.” Contracting Officer,” as used in this clause, does not include any representative of the Contracting Officer. “Specifically Authorized Representative (SAR),” as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this paragraph and shall be issued to the designated representative before the SAR exercises such authority.
- (b) Notice. The primary purpose of this clause is to obtain prompt reporting of

Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within \_\_\_\_\_ (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

- (1) The date, nature, and circumstances of the conduct regarded as a change;
  - (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
  - (3) The identification of any documents and the substance of any oral communication involved in such conduct;
  - (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
  - (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—
    - (i) What contract line items have been or may be affected by the alleged change;
    - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
    - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
    - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
  - (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.
- (c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in

either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

- (d) Government response. The Contracting Officer shall promptly, within \_\_\_\_\_ (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—
- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;
  - (2) Countermand any communication regarded as a change;
  - (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
  - (4) In the event the Contractor's notice information is inadequate to make a decision under paragraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.
- (e) Equitable adjustments.
- (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—
    - (i) In the contract price or delivery schedule or both; and
    - (ii) In such other provisions of the contract as may be affected.
  - (2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of

disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

**I.103 FAR 52.244-2 SUBCONTRACTS (JUNE 2007) ALTERNATE I (JUNE 2007)**

(a) Definitions. As used in this clause—

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on un-priced contract actions (including un-priced modifications or un-priced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

- (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

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- (e) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
  - (ii) Identification of the type of subcontract to be used.
  - (iii) Identification of the proposed subcontractor.
  - (iv) The proposed subcontract price.
  - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
  - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
  - (vii) A negotiation memorandum reflecting—
    - (A) The principal elements of the subcontract price negotiations;
    - (B) The most significant considerations controlling establishment of initial or revised prices;
    - (C) The reason cost or pricing data were or were not required;
    - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

- (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
  - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c) , or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—
- (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the allowability of any cost under this contract; or
  - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs ( c ) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

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**I.104 FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)**

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

**I.105 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2009)**

- (a) *Definitions.* As used in this clause—
  - “Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
  - “Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
  - (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
  - (ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
  - (iii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
  - (iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));

- (v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
- (vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).
- (vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

#### **I.106 FAR 52.245-1 GOVERNMENT PROPERTY (JUNE 2007)**

(a) *Definitions.* As used in this clause—

“Acquisition cost” means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

“Cannibalize” means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

“Contractor-acquired property” means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

“Contractor inventory” means—

- (1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;
- (2) Any property that the Government is obligated or has the option to take over under any type of contract, *e.g.*, as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or

subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

- (3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.
- (4) “Contractor’s managerial personnel” means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—
  - (i) All or substantially all of the Contractor’s business;
  - (ii) All or substantially all of the Contractor’s operation at any one plant or separate location; or
  - (iii) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

“Discrepancies incident to shipment” means any differences (*e.g.*, count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end-item. Material does not include equipment, special tooling and special test equipment.

“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Plant equipment” as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

“Real property” means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

“Sensitive property” means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) *Property management.*

- (1) The Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry-leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Contractor shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

- (2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, disposition, or via a completed investigation, evaluation, and final determination for lost, damaged, destroyed, or stolen property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).
  - (3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.
- (c) *Use of Government property.* The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer. The Contractor shall not modify, cannibalize, or make alterations to Government property unless this contract specifically identifies the modifications, alterations or improvements as work to be performed.
- (d) *Government-furnished property.*
- (1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.
  - (2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.
    - (i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.
    - (ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action

may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3) (i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.*

(1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) *Fixed-price contracts.*

(i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause.

- (ii) Title to each item of equipment, special test equipment and special tooling acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
  - (iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—
    - (A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
    - (B) Title to all other material shall pass to and vest in the Government upon—
      - (1) Issuance of the material for use in contract performance;
      - (2) Commencement of processing of the material or its use in contract performance; or
      - (3) Reimbursement of the cost of the material by the Government, whichever occurs first.
- (3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable contract line items under Fixed-Price contracts.*
- (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.
  - (ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—
    - (A) Issuance of the property for use in contract performance;
    - (B) Commencement of processing of the property for use in contract performance; or
    - (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

- (iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as “Government property”), are subject to the provisions of this clause.

(f) *Contractor plans and systems.*

- (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

- (i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and material control operations.
- (ii) *Receipt of Government Property.* The Contractor shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (*e.g.*, stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

- (iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

- (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).
- (2) Quantity received (or fabricated), issued, and balance-on-hand.
- (3) Unit acquisition cost.
- (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
- (5) Unit of measure.
- (6) Accountable contract number or equivalent code designation.
- (7) Location.
- (8) Disposition.
- (9) Posting reference and date of transaction.
- (10) Date placed in service.

(B) *Use of a Receipt and Issue System for Government Material.*

When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (*e.g.*, overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control.*

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of

contract terms and conditions (*e.g.*, extent of liability for loss, damage, destruction or theft of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies; loss, damage, destruction, or theft; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, damage, destruction, or theft. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, damage, destruction, or theft to the property administrator as soon as the facts become known or when requested by the Government.

(B) Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
- (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
- (3) Quantity.
- (4) Unique Item Identifier (if available).
- (5) Accountable Contract number.
- (6) A statement indicating current or future need.
- (7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
- (8) All known interests in commingled property of which the Government property is a part.
- (9) Cause and corrective action taken or to be taken to prevent recurrence.

- (10) A statement that the Government will receive any reimbursement covering the loss, damage, destruction, or theft, in the event the Contractor was or will be reimbursed or compensated.
  - (11) Copies of all supporting documentation.
  - (12) Last known location.
  - (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.
- (vii) *Relief of stewardship responsibility.* Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—
- (A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, damage, destruction or theft of Government property;
  - (B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or
  - (C) Disposed of in accordance with paragraphs (j) and (k) of this clause.
- (viii) *Utilizing Government property.*
- (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
  - (B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government property with property not owned by the Government.
- (ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine

preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

- (x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, damage, destruction, or theft cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.
  - (2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.
  - (3) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.
- (g) Systems analysis.
- (1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.
  - (2) Records of Government property shall be readily available to authorized Government personnel and shall be safeguarded from tampering or destruction.
  - (3) Should it be determined by the Government that the Contractor's property management practices are inadequate or not acceptable for the effective management and/or control of Government property under this contract, and/or present an undue risk to the Government, the Contractor shall immediately take all necessary corrective actions as directed by the Property Administrator.
  - (4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) *Contractor Liability for Government Property.*

- (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, damage, destruction, or theft to the Government property furnished or acquired under this contract, except when any one of the following applies—
  - (i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.
  - (ii) The loss, damage, destruction, or theft is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel. Contractor's managerial personnel, in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business; all or substantially all of the Contractor's operation at any one plant or separate location; or a separate and complete major industrial operation.
  - (iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, damage, destruction, or theft, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, damage, destruction, or theft of Government property occurred while the Contractor had adequate property management practices or the loss, damage, destruction, or theft of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.
- (2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, damage, destruction, or theft. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.
- (3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property.

- (4) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.
- (i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. The right to an equitable adjustment shall be the Contractor's exclusive remedy and the Government shall not be liable to suit for breach of contract for the following:
  - (1) Any delay in delivery of Government-furnished property.
  - (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
  - (3) An increase, decrease, or substitution of Government-furnished property.
  - (4) Failure to repair or replace Government property for which the Government is responsible.
- (j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.
  - (1) *Scrap to which the Government has obtained title under paragraph (e) of this clause.*
    - (i) *Contractor with an approved scrap procedure.*
      - (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.
      - (B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—
        - (1) Requires demilitarization;
        - (2) Is a classified item;
        - (3) Is generated from classified items;

- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals; or
- (6) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without Government approval.

(2) Predisposal requirements.

(i) Once the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority—

(A) May contact the Contracting Officer if use of the property in the performance of other Government contracts is practical;

(B) May purchase the property at the acquisition cost; or

(C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(ii) The Contractor shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government contracts under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

(3) *Inventory disposal schedules.*

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;

- (B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and
  - (C) Termination inventory.
- (ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.
  - (iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—
    - (A) Special test equipment with commercial components;
    - (B) Special test equipment without commercial components;
    - (C) Printing equipment;
    - (D) Information technology (*e.g.*, computers, computer components, peripheral equipment, and related equipment);
    - (E) Precious metals;
    - (F) Nonnuclear hazardous materials or hazardous wastes; or
    - (G) Nuclear materials or nuclear wastes.
  - (iv) The Contractor shall describe the property in sufficient detail to permit an understanding of its intended use. Property with the same description, condition code, and reporting location may be grouped in a single line item.
- (4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—
- (i) 30-days following the Contractor's determination that a Government property item is no longer required for performance of this contract;
  - (ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

- (iii) 120 days, or such longer period as may be approved by the Termination Contracting Officer following contract termination in whole or in part.
- (5) *Corrections.* The Plant Clearance Officer may—
  - (i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and
  - (ii) Require the Contractor to correct an inventory disposal schedule.
- (6) *Postsubmission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.
- (7) *Storage.*
  - (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121<sup>st</sup> day.
  - (ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.
- (8) *Disposition instructions.*
  - (i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.
  - (ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. If not returned to the Government, the Contractor shall

remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) *Disposal proceeds.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract or to the Treasury of the United States as miscellaneous receipts.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) *Abandonment of Government property.*

(1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Contracts outside the United States.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

#### **I.107 FAR 52.245-9 USE AND CHARGES (JUNE 2007)**

(a) *Definitions.* As used in this clause:

"Acquisition cost" means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs

necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.

“Plant equipment”, as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

“Real property” means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

“Rental period” means the calendar period during which Government property is made available for nongovernmental purposes.

“Rental time” means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

- (b) *Use of Government property.* The Contractor may use the Government property without charge in the performance of—
- (1) Contracts with the Government that specifically authorize such use without charge;
  - (2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—
    - (i) Approves a subcontract specifically authorizing such use; or
    - (ii) Otherwise authorizes such use in writing; and
  - (3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.
- (c) *Rental.* If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor’s right to use the Government

property. The rental fee shall be determined in accordance with the following paragraphs.

(d) General.

- (1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.
- (2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) Rental charge.—

(1) Real property and associated fixtures.

- (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.
- (ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.
- (iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.
- (iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

- (2) *Other Government property.* The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.
- (3) *Alternative methodology.* The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) Rental payments.

- (1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in this contract, unless otherwise specified by the Contracting Officer.
- (2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the “Renegotiation Board Interest Rate” (published in the *Federal Register* semiannually on or about January 1st and July 1st) for the period in which the rent is due.
- (3) The Government’s acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor’s unauthorized use of Government property or any other failure to perform this contract according to its terms.

(g) *Use revocation.* At any time during the rental period, the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor’s expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) *Unauthorized use.* The unauthorized use of Government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

**I.108 FAR 52.246-25 LIMITATION OF LIABILITY – SERVICES (FEB 1997)**

- (a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the

services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that—

- (1) Occurs after Government acceptance of services performed under this contract; and
  - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—
- (1) All or substantially all of the Contractor's business;
  - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

**I.109 FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)**

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If the Government is shown as the consignor or the consignee, the annotation shall be: Transportation is for the \_\_\_\_\_ [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

- (b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the \_\_\_\_\_ [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. \_\_\_\_\_ . This may be confirmed by contacting \_\_\_\_\_ [*Name and address of the contract administration office listed in the contract*].

**I.110 FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)**

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

- (1) By the Contractor under a cost-reimbursement contract; and
- (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

- (c) Contractors shall submit the above referenced transportation documents to—

**TBD**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[To be filled in by Contracting Officer]

**I.111 FAR 52.248-1 VALUE ENGINEERING (FEB 2000)**

- (a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) of this clause.

- (b) *Definitions.*

“Acquisition savings,” as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

- (1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by

- the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;
- (2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and
  - (3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

“Collateral savings,” as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

“Contracting office” includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

“Contractor's development and implementation costs,” as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

“Future unit cost reduction,” as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either—

- (1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or
- (2) To the calculation of a lump-sum payment, which cannot later be revised.

“Government costs,” as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

“Instant contract,” as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this

is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance (without deducting any Contractor’s development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

“Negative instant contract savings” means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor’s allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

“Net acquisition savings” means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

“Sharing base,” as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

“Sharing period,” as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

“Unit,” as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

“Value engineering change proposal (VECP)” means a proposal that—

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—
  - (i) In deliverable end item quantities only;
  - (ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or
  - (iii) To the contract type only.

- (c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (8) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
- (1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.
  - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - (3) Identification of the unit to which the VECP applies.
  - (4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause.
  - (5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - (6) A prediction of any effects the proposed change would have on collateral costs to the agency.
  - (7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
  - (8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.
- (d) *Submission.* The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.
- (e) Government action.

- (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.
  - (2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.
  - (3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.
- (f) *Sharing rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon—
- (1) This contract's type (fixed-price, incentive, or cost-reimbursement);
  - (2) The sharing arrangement specified in paragraph (a) of this clause (incentive, program requirement, or a combination as delineated in the Schedule); and
  - (3) The source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS (FIGURE IN PERCENT)				
CONTRACT TYPE	INCENTIVE (VOLUNTARY)		PROGRAM REQUIREMENT (MANDATORY)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***25	***25	15	15

\* The Contracting Office may increase the Contractor's sharing rate to as high as 75 percent for each VECP.  
 \*\* Same sharing arrangement as the contract's profit or fee adjustment formula.  
 \*\*\* The Contracting Office may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

- (g) Calculating net acquisition savings.

- (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see paragraph (i)(4) of this clause). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.
  - (2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) of this clause). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.
  - (3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.
  - (4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.
- (h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall—
- (1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;
  - (2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;
  - (3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;
  - (4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

- (5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:
- (i) Fixed-price contracts—add to contract price.
  - (ii) Cost-reimbursement contracts—add to contract fee.
- (i) Concurrent and future contract savings.
- (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with paragraph (h)(5) of this clause. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.
  - (2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by—
    - (i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset; and
    - (ii) Multiplying the result by the Contractor's sharing rate.
  - (3) The Contracting Officer shall calculate the Contractor's share of future contract savings by—
    - (i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;
    - (ii) Subtracting any Government costs or negative instant contract savings not yet offset; and
    - (iii) Multiplying the result by the Contractor's sharing rate.
  - (4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see paragraph (h)(3) of this clause) and shall not be subject to subsequent adjustment.

- (5) *Alternate no-cost settlement method.* When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:
- (i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.
  - (ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.
- (j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.
- (k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.
- (l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.
- (m) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract \_\_\_\_\_, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or

in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

**I.112 FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004)**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—
  - (1) The Contracting Officer determines that a termination is in the Government's interest; or
  - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.

- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
    - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
  - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
  - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.
  - (3) The reasonable costs of settlement of the work terminated, including—

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
- (4) A portion of the fee payable under the contract, determined as follows:
- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
  - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
  - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor—
    - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
    - (2) The amount finally determined on an appeal.

- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted—
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**I.113 FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)**

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and

- (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—
- (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
  - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

**I.114 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

**I.115 FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)**

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

**I.116 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**I.117 FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

**I.118 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

**I.119 DEAR 952.204-2 SECURITY (JUNE 2009)**

- (a) Responsibility. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification

- levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) Regulations. The Contractor agrees to comply with all security regulations and contract requirements of DOE in effect on the date of award.
  - (c) Definition of Classified Information. The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.
  - (d) Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].
  - (e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
  - (f) Definition of National Security Information. The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.
  - (g) Definition of Special Nuclear Material. The term "special nuclear material" means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
  - (h) Access authorizations of personnel.
    - (1) The Contractor shall not permit any individual to have access to any classified

information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

- (2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.
  - (i) A review must: verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.
  - (ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
  - (iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.
  - (iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR Part 707.4. All positions requiring access authorizations are deemed testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE

access authorization unless their tests confirm the absence from their system of any illegal drug.

- (v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted
- (vi) The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:
  - A. The date(s) each Review was conducted;
  - B. Each entity that provided information concerning the individual;
  - C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
  - D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
  - E. The results of the test for illegal drugs.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).
- (j) Foreign Ownership, Control, or Influence.

- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.
  - (2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
  - (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.
  - (4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.
- (k) Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.
- (l) Flow down to subcontracts. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require Subcontractor employees to possess

access authorizations. Additionally, the Contractor must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in DEAR 952.204-73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any Subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

**I.120 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)**

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.
- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

**I.121 DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)**

(a) Definitions.

- (1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

- (2) Individual means a DOE contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A contractor shall not allow an individual to have access to information on a DOE computer unless:

- (1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and,

- (2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) Subcontracts. The contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

**I.122 DEAR 952.208-70 PRINTING (APR 1984)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

**I.123 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)**

- (a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

- (1) Use of Contractor's Work Product.

- (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of (Contracting Officer see DEAR 9.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:
  - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
  - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

- (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
  - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
  - (iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
  - (2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the

reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

**I.124 DEAR 952.223-71 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH TO WORK PLANNING AND EXECUTION (DEC 2000)**

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include subcontractor employees.

(b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

- (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;
  - (4) Perform work within controls; and
  - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and

- commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer.
- The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the

subcontractor to submit a Safety Management System for the contractor's review and approval.

**I.125 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

**I.126 DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)**

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

**I.127 DEAR 952.226-74 DISPLACED EMPLOYEES HIRING PREFERENCE (JUN 1997)**

- (a) Definition.  
Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**I.128 DEAR 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994)**

Except for technical data contained on pages TBD of the contractor's proposal dated TBD which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based. [62 FR 2310, Jan. 16, 1997]

**I.129 DEAR 952.231-71 INSURANCE – LITIGATION AND CLAIMS (APR 2002)**

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
  - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
  - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.
- (e) Except as provided in paragraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-
  - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
  - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or limitation of funds clause of this contract.
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-
  - (1) Which are otherwise unallowable by law or the provisions of this contract; or
  - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.
- (h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented in 48 CFR Part 931, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and

- settlements), shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-
- (1) Willful misconduct,
  - (2) Lack of good faith, or
  - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j)
- (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
  - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
  - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
  - (4) The term "contractor's managerial personnel" is defined in the Property clause in this contract.
- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-

- (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
- (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
- (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

**I.130 DEAR 952.233-5 AGENCY PROTEST REVIEW (SEP 1996)**

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the contracting officer prior to filing a protest.

**I.131 DEAR 952.247-70 FOREIGN TRAVEL (DEC 2000)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

**I.132 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such

a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.

- (d) (1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
- (2) In the event of an extraordinary nuclear occurrence which:
  - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  - (iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;
2. Contributory negligence;
3. Assumption of risk; or
4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

- (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - (iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
  - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

**I.133 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNT (DEC 2000)**

- (a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.
- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

- (c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- (d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- (e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.
- (f) Obtaining travel discounts.
  - (1) Determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.
  - (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

**I.134 DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)**

- (a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract

- performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.
- (b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.
  - (c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.
  - (d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

**I.135 DEAR 970.5204-2 LAWS, REGULATIONS AND DOE DIRECTIVES (DEC 2000)**

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies

- between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
  - (d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
  - (e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

**I.136 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)**

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. **[The**

**contracting officer shall identify which of the following categories of records will be included in the clause.]**

- (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
  - (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
  - (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
  - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
  - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
    - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
    - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
    - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of

this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
  - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
  - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
  - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

**I.137 DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM AS MODIFIED BY DOE ACQUISITION LETTER 2008-05 (APR 2008)**

- (a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.
- (b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.
- (c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.
- (d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties
- (e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

**I.138 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)**

- (a) Program Implementation: The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies: In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts:
  - (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.
  - (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
  - (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

**I.139 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)**

- (a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.
- (b) The requirements of this clause shall be included in subcontracts at any tier (except

subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**I.140 DEAR 970.5226- 3 COMMUNITY COMMITMENT (DEC 2000)**

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

**I.141 DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)**

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer

software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
- (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
- (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be

governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

- (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.
- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of

the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
  - (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
  - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

- (e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.
- (f) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No.-. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
  - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
  - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
  - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
  - (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.
- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No.- with (name of Contractor).

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
  - (4) If restricted computer software is delivered with the copyright notice of *17 U.S.C. 401*, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."
- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

**I.142 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)**

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
- (c)
  - (1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.
  - (2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.
  - (3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

**I.143 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)**

- (a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

**I.144 DEAR 970.5227-6 PATENT INDEMNITY-SUBCONTRACTS (DEC 2000)**

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

**I.145 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)**

- (a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:
- (1) Name and address of licensor;
  - (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
  - (3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
  - (4) Percentage or dollar rate of royalty per unit;
  - (5) Unit price of contract item;
  - (6) Number of units;
  - (7) Total dollar amount of royalties; and
  - (8) A copy of the proposed license agreement.
- (b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.
- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.
- (d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

- (e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.
- (f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.
- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**I.146 DEAR 970.5227-10 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002)**

- (a) Definitions.
  - (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
  - (2) Exceptional circumstance subject invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under *35 U.S.C. 202(a)(ii)* and in accordance with *37 CFR 401.3(e)*.
  - (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321 et seq.*).
  - (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

- (5) Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (*26 U.S.C. 501(c)*) and exempt from taxation under section 501(a) of the Internal Revenue Code (*26 U.S.C. 501(a)*) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
  - (6) Patent Counsel means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.
  - (7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
  - (8) Small business firm means a small business concern as defined at section 2 of Pub. L. 85-536 (*15 U.S.C. 632*) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.
  - (9) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, *7 U.S.C. 2401(d)*) shall also occur during the period of contract performance.
- (b) Allocation of Principal Rights.
- (1) Retention of title by the Contractor. Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and *35 U.S.C. 203*. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
  - (2) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest,

throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) uranium enrichment technology;

(B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(3) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [ Insert Reference ] to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations [\*81060] under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(4) Contractor request for greater rights in exceptional circumstance subject inventions. The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at

the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) Government assignment of rights in Government employees' subject inventions. If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(c) Subject Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.

(1) Subject invention disclosure. The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has

been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

- (2) Election by the Contractor. Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
- (3) Filing of patent applications by the Contractor. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) Contractor's request for an extension of time. Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.
- (5) Publication Approval. During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor, approval for release or publication shall be secured from the Contractor personnel responsible for patent matters prior to any such release or publication. Where DOE's approval of publication is requested,

DOE's response to such requests for approval shall normally be provided within 90 days except in circumstances in which a domestic patent application must be filed in order to protect foreign rights. In the case involving foreign patent rights, DOE shall be granted an additional 180 days with which to respond to the request for approval, unless extended by mutual agreement.

(d) Conditions When the Government May Obtain Title.

The Contractor will convey to the DOE, upon written request, title to any subject invention-

- (1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.
- (2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.
- (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- (4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(e) Minimum Rights of the Contractor and Protection of the Contractor's Right to File.

- (1) Request for a Contractor license. The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The

license is transferable only with the approval of DOE except when transferred to the successor of that part of the contractor's business to which the invention pertains.

- (2) Revocation or modification of a Contractor license. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.
- (3) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest.

- (1) Execution of delivery of title or license instruments. The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:
  - (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and
  - (ii) convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the

Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- (3) Notification of discontinuation of patent protection. The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.
- (4) Notification of Government rights. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."
- (5) Invention Identification Procedures. The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.
- (6) Invention Filing Documentation. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:
  - (i) the filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
  - (ii) an executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
  - (iii) the patent number, issue date, and a copy of any issued patent claiming the subject invention.
- (7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided,

however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR Part 40.

(g) Subcontracts.

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227-11.
- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.
- (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (5) Subcontractor refusal to accept terms of patent clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.
- (h) Reporting on Utilization of Subject Inventions. The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- (i) Preference for United States Industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-in Rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that-

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
  - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
  - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
  - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special Provisions for Contracts With Nonprofit Organizations. If the Contractor is a nonprofit organization, it agrees that-
- (1) DOE approval of assignment of rights. Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.
  - (2) Small business firm licensees. It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

- (3) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (l) Communications. The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.
  - (m) Reports.
    - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.
    - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
  - (n) Examination of Records Relating to Subject Inventions.
    - (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.
    - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
    - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

- (4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (o) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (p) Atomic Energy.
  - (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
  - (2) Patent agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (q) Classified Inventions.
  - (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
  - (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified

subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (r) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (s) Educational Awards Subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.
- (t) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

**I.147 DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)**

- (a) Definitions.
  - (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
  - (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
  - (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
  - (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

- (5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.
- (6) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (7) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) Allocation of Principal Rights.

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
- (2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(c) Subject Invention Disclosures.

- (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.
- (2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
  - (i) the contract number under which the subject invention was made;
  - (ii) the inventor(s) of the subject invention;
  - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
  - (iv) the date and identification of any publication, on sale or public use of the invention;
  - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
  - (vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to *35 U.S.C. 202(ii)*, related to

national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

- (vii) all sources of funding by Budget and Resources (B&R) code; and
  - (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of *42 U.S.C. 5908*.
- (3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.
- (4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.
- (6) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to *35 U.S.C. 205* and *37 CFR 401.13*.
- (d) Minimum Rights of the Contractor.
- (1) Contractor License.

- (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(2) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
  - (ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.
  - (iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
  - (iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.
- (2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the

Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.

(e) Examination of Records Relating to Inventions.

- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
- (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(f) Subcontracts.

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except

subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).

- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.
  - (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
  - (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
  - (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
  - (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (g) Atomic Energy.
- (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
  - (2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to

effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

- (h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.
- (i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.
- (j) Reports.
  - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.
  - (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any

time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(l) Classified Inventions.

- (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

- (m) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (n) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

**I.148 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000)**

- (a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on [Insert date contract began]. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in

existence prior to [Insert date contract began], the contractor shall be responsible in accordance with the terms and conditions of this contract.

- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

**I.149 DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)**

- (a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

**SECTION J**

**Attachment J-1**

**LIST OF APPLICABLE FEDERAL LAW & REGULATIONS - LIST A**

The federal laws and regulations listed in the table below contain requirements normally relevant to the Contractor scope of work. These laws and regulations, and others, apply regardless whether they are explicitly stated in the Contract. In addition, laws and regulations typically apply to all persons or organizations such as subcontractors, suppliers, and federal employees.

This list does not have to be provided in the Contract, but it may be appended to the Contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to DEAR clause 970.5204-2. The Contractor must be aware of changes in the Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR), the United States Code (USC), Public Laws (PL) or other regulatory entities that have applicability to the Department of Energy and that impact the work scope.

The Contractor will notify DOE and a determination will be made regarding modification to the contract. The following table does not contain any specific state laws, regulations, permits, and licenses, etc.

<b>Regulation</b>	<b>Regulation Title</b>
10 CFR 820	Procedural Rules for DOE Nuclear Facilities
10 CFR 824	Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations
10 CFR 830	Nuclear Safety Management
10 CFR 835	Occupational Radiation Protection
10 CFR 850	Chronic Beryllium Disease Prevention Program
10 CFR 851	Worker Safety and Health Program
48 CFR Part 970.5203-2	Performance Improvement and Collaboration
48 CFR Part 970.5204-2	Laws, Regulations, and DOE Directives
48 CFR Part 970.5215-3	Conditional Payment of Fee, Profit, or Incentives (or alternatively, 48 CFR Part 952.223-76 or 952.223-77, Conditional Payment of Fee or Profit)
49 CFR Part 173.417	Authorized Fissile Material Package
49 CFR Part 173.420	Uranium Hexafluoride (Fissile, Fissile Excepted, and Non-Fissile)
49 CFR Part 173.427	Transport Requirements for Low Specific Activity (LSA) Class 7 (Radioactive) Materials and Surface Contaminated Objects (SCO)
42 U.S.C. 2297h-8(a)	Employee Protections

**Section J**  
**Attachment J-2**

LIST OF APPLICABLE DOE DIRECTIVES - LIST B

The Contractor Requirements Documents of the DOE Directives listed below are applicable, in whole or in part, in accordance with Section I Clause entitled "DEAR 970.5204-2 LAWS, REGULATIONS AND DOE DIRECTIVES (DEC 2000)". The concurrence analyses documenting applicability for each requirement below are maintained in the DOE Master File and are made part of this contract by reference and are managed through a formal change control process.

<b>Orders</b>	<b>Title of Order(s)</b>
DOE O 142.2A	Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency
DOE O 142.3	Unclassified Foreign Visits and Assignments Program
DOE 150.1	Continuity Programs
DOE O 151.1C	Comprehensive Emergency Management System
DOE O 200.1	Information Management Program
DOE O 205.1A	Department of Energy Cyber Security Management Program
DOE O 210.2	DOE Corporate Operating Experience Program
DOE O 221.1A	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 221.2A	Cooperation with the Office of Inspector General
DOE O 225.1A	Accident investigations
DOE O 226.1A	Implementation of DOE Oversight Policy
DOE O 231.1A	Environment, Safety, and Health Reporting Requirements
DOE O 241.1A	Scientific and Technical Information Management
DOE O 243.1	Records Management Program
DOE O 243.2	Vital Records

DOE O 251.1C	Directives System
DOE O 252.1	Technical Standards Program
DOE O 311.B	Equal Employment Opportunity and Diversity Program
DOE O 350.1	Contractor Human Resource Management Programs
DOE O 413.1B	Internal Control Program
DOE O 413.3A	Program and Project Management for the Acquisition of Capital Assets
DOE O 414.1C	Quality Assurance
DOE O 420.1B	Facility Safety
DOE G 420.1	Nonreactor Nuclear Safety Design Criteria and Explosives Safety Criteria Guide.
DOE O 425.1C	Startup and Restart of Nuclear Facilities
DOE O 430.1B	Real Property Asset Management
DOE O 430.2B	Departmental Energy, Renewable Energy and Transportation Management
DOE O 433.1A	Maintenance Management Program for DOE Nuclear Facilities
DOE O 435.1	Radioactive Waste Management
DOE O 440.1B	Worker Protection Management for DOE (Including the National Nuclear Security Administration) Federal Employees
DOE O 442.1A	Department of Energy Employee Concerns Program
DOE O 450.1A	Environmental Protection Program
DOE P 450.4	Safety Management System Policy
DOE O 451.1B	National Environmental Policy Act Compliance Program
DOE O 460.1B	Packaging and Transportation Safety
DOE O 460.2A	Departmental Materials Transportation and Packaging Management

DOE O 461.1A	Packaging and Transfer or Transportation of Materials of National Security Interest
DOE P 470.1	Integrated Safeguards and Management (ISSM) Policy
DOE O 470.2B	Independent Oversight and Performance Assurance Program
DOE O 470.3B	Graded Security Protection Program (GSP) Policy
DOE O 470.4A	Safeguards and Security Program
DOE O 471.1A	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.3	Identifying and Protecting Official Use Only Information
DOE O 475.2	Identifying Classified Information
DOE O 522.1	Pricing of Departmental Materials and Services
DOE O 523.1	Financial Management Oversight
DOE O 534.1B	Accounting
DOE O 551.1B	Official Foreign Travel
DOE O 580.1	Department of Energy Personal Property Management Program
DOE O 5400.5	Radiation Protection of the Public and the Environment
DOE O 5480.19	Conduct of Operations Requirements for DOE Facilities
DOE O 5480.20A	Personnel Selection, Qualification and Training Requirements for DOE Nuclear Facilities

**DOE Standards**

**Title of Standard(s)**

DOE-STD-1030-96	Guide to Good Practices for Lockouts and Tagouts
DOE-STD-1090-04	Hoisting and Rigging
DOE-STD-1098-99	Radiological Control
DOE-STD-1107-97	Knowledge, Skills, and Abilities for key Radiation Protection Positions at DOE Facilities

DOE-STD-3020-2005 Specification for HEPA Filters used by DOE Contractors

DOE-STD-3025-2007 Qualities Assurance Inspection and Testing of HEPA Filters

**Manuals**

**Title of Manual(s)**

DOE M 413.3-1-1 Project Management for the Acquisition of Capital Assets

DOE M 470.4-6 Nuclear Material Control and Accountability

DOE M 475.1-1B Identifying Classified Information

**Handbooks**

**Title of Handbook(s)**

DOE-HDBK-1062-96 DOE Fire Protection Handbook

DOE/EH-0535 Handbook for Occupational Safety and Health During Hazardous Waste Activities

DOE/EH-0196 Fire Prevention Measures for Cutting, Welding, and Related Activities

**Section J**  
**Attachment J-3**

LIST OF PROJECT AGREEMENTS AND CORRESPONDENCE

<b>Identification</b>	<b>Description</b>
J-3-1	The State of Ohio EPA Directors Final Findings & Orders, dated February 24, 1998, amended June 24, 2005 and February 21, 2008
J-3-2	Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet Agreed Order, October 2, 2003
J-3-3	William E. Murphie to Andrew Wallo, III, Director, Office of Air, Water and Radiation, EH-41, Release limits for Hydrofluoric Acid and Calcium Fluoride from Depleted Uranium Hexafluoride (DUF6) Conversion, PPPO-01-402-05, August 12, 2005
J-3-4	To William Murphie, PPPO, from Margaret M. Guerriero, Director, Waste, Pesticides and Toxics, US EPA, TSCA Approval for Storage for Disposal of PCB Bulk Product (Mixed) Waste (paint with 50 ppm or greater PCBs on cylinders containing radioactive material) U.S. DOE Portsmouth Gaseous Diffusion Plant, Portsmouth, OH, June 1, 2005.
J-3-5	Hazel R. O'Leary, Secretary of Energy, to John T. Conway, Chairman, Defense Nuclear Facilities Safety Board, Implementation Plan for DNFSB Recommendation 95-1, Improved Safety of Cylinders Containing Depleted Uranium, October 16, 1995

**SECTION J**

**Attachment J-4**

**LIST OF ACRONYMS**

ACH	Automatic Clearing House
ACO	Administrative Contracting Officer
ACWP	Actual Cost of Work Performed
ACWS	Actual Cost of Work Scheduled
ADR	Alternative Dispute Resolution
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
ALARA	As Low As Reasonably Achievable
ANC	Alaska Native Corporation
ANSI	American National Standards Institute
AqHF	Aqueous Hydrofluoric Acid
ASME	American Society of Mechanical Engineers
B&R	Budget and Reporting
BCWP	Budgeted Cost of Work Performed
BCWS	Budgeted Cost of Work Scheduled
Ben-Val	Benefits Value
BJC MEPP	Bechtel Jacobs Multi-Employer Pension Plan
BPCS	Basic Plant Control System
CaF <sub>2</sub>	Calcium Fluoride
CAIRS	Computerized Accident/Incident Reporting System
CAIS	Condition Assessment Information System
CAS	Cost Accounting Standards
CASB	Cost Accounting Standards Board
CBA	Collective Bargaining Agreement
CCR	Central Contractor Registration
CD	Critical Decision
CD-ROM	Compact Disc – Read Only Memory
CEP	Cylinder Evacuation Plan
CER	Cylinder Evacuation Room
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFA	Cognizant Federal Agency
CFAO	Cognizant Federal Agency Official
CFR	Code of Federal Regulation
CID	Cylinder Information Database
CIP	Compensation Increase Plan
CO	Contracting Officer
COOP	Continuity of Operations
COR	Contracting Officer's Representative
CPAF	Cost-Plus-Award-Fee
CRADA	Cooperative Research and Development Agreement
CSY	Cylinder Storage Yard

DART	Days Away, Restricted, or Transferred
DB	Defined Benefit
DC	Defined Contribution
DCAA	Defense Contract Audit Agency
DCI	Detailed Cost-Impact
DCO	Designated Contracting Officer
DEAR	Department of Energy Acquisition Regulation
DFF&O	Director's Final Findings and Orders
DNFSB	Defense Nuclear Facilities Safety Board
DOD	Department of Defense
DOE	Department of Energy
DOL	Department of Labor
DSA	Documented Safety Analysis
DU	Depleted Uranium
DUF <sub>6</sub>	Depleted Uranium Hexafluoride
DUNS	Data Universal Numbering System
EAC	Estimate at Completion
EAL	Emergency Action Level
ECI	Export Controlled Information
EEOC	Equal Employment Opportunity Commission
EEOICPA	Energy Employee Occupational Illness Compensation Program
EFT	Electronic Funds Transfer
EIA	Electronic Industries Alliance
EIS	Environmental Impact Statement
EM	Environmental Management
EMCBC	Environmental Management Consolidated Business Center
EOC	Emergency Operations Center
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986
EPEAT	Electronic Product Environmental Assessment Tool
EPHA	Emergency Planning Hazards Assessment
ERAP	Emergency Readiness Assurance Plan
ERISA	Employee Retirement Income Security Act
ES&H	Environmental Safety and Health
ESH&Q	Environment, Safety, Health and Quality
eSRS	Electronic Subcontracting Reporting System
ETC	Estimate to Complete
ETTP	East Tennessee Technology Park, formerly Oak Ridge Gaseous Diffusion Plant
EVMS	Earned Value Management System
FACTS	Foreign Access Central Tracking System
FAC	Federal Acquisition Circular
FAR	Federal Acquisition Regulation
FDD	Facility Design Description
FDO	Fee Determination Official
FEMP	Federal Energy Management Program
FICA	Federal Insurance Contributions Act

FIMS	Facilities Information Management System
FIPS PUB	Federal Information Processing Standards Publication
FOB	Free On Board
FOCI	Foreign Ownership Control or Influence
FOIA	Freedom of Information Act
FPD	Federal Project Director
FR	Facility Representative/Federal Register
FUTA	Federal Unemployment Tax Act
FY	Fiscal Year
G&A	General & Administrative
GAO	Government Accountability Office
GDM	General Dollar Magnitude
GDP	Gaseous Diffusion Plant
GFP	Government Furnished Property
GFS/I	Government Furnished Services and Items
GPO	Government Printing Office
GSA	General Services Administration
HC	Hazard Category
HEPA	High Efficiency Particulate Air
HF	Hydrogen Fluoride, Hydrofluoric Acid
HQ	Headquarters
HSPD-12	Homeland Security Presidential Directive-12
HUBZone	Historically Underutilized Business Zone
IBR	Integrated Baseline Review
ICS	Integrated Process Control
IEEE	Institute of Electrical and Electronics Engineers
IIPS	Interactive Industry Procurement System
IP	Internet Protocol
IPABS	Integrated Accountability, and Budgeting System
IPABS-IS	Integrated Planning, Accountability, and Budgeting System Information Systems
IPT	Integrated Project Team
IPv4	Internet Protocol Version 4
IPv6	Internet Protocol Version 6
IRC	Internal Revenue Code
IRS	Internal Revenue Service
ISMS	Integrated Safety Management System
ISR	Individual Subcontractor Report
ISS	Independent Safety System
IT	Information Technology
KF	Potassium Fluoride
KOH	Potassium Hydroxide
LDR	Land Disposal Restrictions
LEU	Low Enriched Uranium
LEUF6	Low Enriched UF6
LLC	Limited Liability Company
LLW	Low Level Waste

LPP	Los Alamos Technical Associates/Parallax Portsmouth, LLC
LTD	Limited
MOA	Memorandum of Agreement
MEPP	Multi-Employer Pension Plan
MEWA	Multiple Employer Welfare Arrangement
MLLW	Mixed Low-Level Waste
M&O	Managing and Operating
MSDS	Material Safety Data Sheet
MT	Metric Ton
MTMC	Military Traffic Management Command
NaF	Sodium Fluoride
NAICS	North American Industry Classification System
NASA	National Aeronautics and Space Administration
NDA	Non-destructive Assay
NEPA	National Environmental Policy Act
NIH	National Institutes of Health
NLRB	National Labor Relations Board
NMC&A	Nuclear Materials Control and Accountability
NNSA	National Nuclear Security Administration
NOAV	Notice of Alleged Violation
NOV	Notice of Violation
NQA	Nuclear Quality Assurance
NRC	Nuclear Regulatory Commission
NSO	Nuclear Support Office
NTS	Nevada Test Site
NTS	Non-Compliance Tracking System
NUF6	Normal UF6
O&M	Operations and Maintenance
OATELS	Office of Apprenticeship Training, Employer and Labor Services
OEPA	Ohio Environmental Protection Agency
OFAC	Office of Foreign Assets Control
OFCCP	Office of Federal Contract Compliance Program
OLMS	Office of Labor-Management Standards
OMB	Office of Management and Budget
ORCA	Online Representations and Certifications Application
ORPS	Occurrence Reporting and Processing System
ORR	Operational Readiness Review
OSHA	Occupational Safety and Health Administration
OTSP	Operations Transition and Start-Up Plan
OUO	Official Use Only
PC	Performance Category
P. L.	Public Law
PAAA	Price Anderson Amendment Act
PACE	Paper, Allied-Industrial, Chemical, and Energy Workers International Union
PAD	Paducah Gaseous Diffusion Plant
PCB	Polychlorinated Biphenyl

PDF	Portable Document Format
PDSAs	Preliminary Documented Safety Analyses
PEIS	Programmatic Environmental Impact Statement
PEMP	Performance Evaluation and Management Plan
PGDP	Paducah Gaseous Diffusion Plant
PIDS	Property Information Database System
PM	Bureau of Political-Military Affairs
PMB	Performance Measurement Baseline
PORTS	Portsmouth Gaseous Diffusion Plant
PPA	Pollution Prevention Act of 1990
PPIRS	Past Performance Information Retrieval System
PPPO	Portsmouth Paducah Project Office
PQAP	Project Quality Assurance Plan
PRB	Post-Retirement Benefits
PRS	Paducah Remediation Services, LLC
PWS	Performance Work Statement
QA	Quality Assurance
QAP	Quality Assurance Program
QCAR	Quarterly Critical Analysis Report
RA	Readiness Assessment
RCRA	Resource Conservation and Recovery Act
RFP	Request For Proposal
RMP	Risk Management Plan
ROD	Record of Decision
RV	Relative Value
SA	Supplement Analysis
SF	Standard Form
S&M	Surveillance and Maintenance
S/RID	Standards/Requirements Identifications Document
SBA	Small Business Administration
SCA	Service Contract Act
SDB	Small Disadvantaged Business
SDD	System Design Description
SIC	Standard Industrial Classification
SNM	Special Nuclear Material
SOW	Statement of Work
SRD	System Requirements Document
SSC	Systems, Structures, Components
SSO	Source Selection Official
SSOR	Safety System Oversight Representative
SSR	Summary Subcontractor Report
SS SSCs	Safety-Significant Systems, Structures, Components
SST	Swift & Staley Mechanical Contractors, Inc.
SUTA	State Unemployment Tax Authority
SWMU	Solid Waste Management Unit
TBD	To Be Determined

TEC	Total Estimated Cost
TIN	Taxpayer Identification Number
TPC	Total Project Cost
TPMC	Theta Pro2Serve Management Company
TRU	Transuranic
TSCA	Toxic Substances Control Act
TSR	Technical Safety Requirements
U	Uranium
<sup>235</sup> U	Uranium 235 Isotope
UCNI	Unclassified Controlled Nuclear Information
UDS	Uranium Disposition Services, LLC
UF6	Uranium Hexafluoride (synonymous with normal UF6)
UO <sub>2</sub> F <sub>2</sub>	Uranyl Fluoride
UO <sub>x</sub>	Uranium Oxide Mixture
USC	United States Code
USDA	United States Department of Agriculture
USEPA	United States Environmental Protection Agency
USEC	United States Enrichment Corporation
USW	United Steel Workers
VECP	Value Engineering Change Proposal
WAC	Waste Acceptance Criteria
WBS	Work Breakdown Structure
WFIS	Work Force Information System
WS&H	Worker Safety and Health
WSAP	Worker Substance Abuse Program
WSHP	Worker Safety and Health Program
WSS	Work Smart Standards
YTD	Year-to-Date

**PART III –LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J**

**LIST OF ATTACHMENTS**

<u>Attachment</u>	<u>Description</u>
J-1	List of Applicable Federal Law & Regulations - List A
J-2	List of Applicable DOE Directives – List B
J-3	List of Project Agreements and Correspondence
J-4	List of Acronyms
J-5	DUF6 Services & Contract Interface Requirements Matrix
J-6	Wage Determination – Portsmouth
J-7	Wage Determination – Paducah
J-8	CBA Wage Determination – Portsmouth and Paducah
J-9	Guidance for Preparation of Employee Concerns Program (ECP) Implementation Plan
J-10	Operations Transition and Start-up Plan (OTSP)
J-11	Small Business Subcontracting Plan
J-12	Performance Guarantee Agreement